

REPORTER'S RECORD

ORIGINALVOLUME 20 OF 36 VOLUMES

TRIAL COURT CAUSE NO. 0885306

THE STATE OF TEXAS) IN THE 213TH JUDICIAL
VS.) DISTRICT COURT OF
BILLY JACK CRUTSINGER) TARRANT COUNTY, TEXAS

VOIR DIRE PROCEEDINGS

On 12th day of September, 2003, the voir dire proceedings came on to be heard, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable David Richards, Judge Presiding, held in Fort Worth, Tarrant County, Texas.

Proceedings reported by computerized stenotype machine; Reporter's Record produced by computer-aided transcription.

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PROCEEDINGS

Friday, September 12, 2003

(Open court, Defendant present.)

MR. RAY: Judge, at this time, we would ask the Court to grant us five additional peremptory challenges. I am not sure at what number -- maybe you can enlighten me -- at what number you took over for Judge Gill. Do you remember?

THE COURT: I don't remember. I believe, you had used nine when I took over, I believe.

MR. RAY: So I think we are all past -- I think all of these errors, other than one of them or, excuse me, two of them -- six peremptory challenges is what I'm asking for, and I'm not sure when you took over. Anyway, if I could elaborate on that.

First of all, in regards to Juror No. 28, named Reeves, the Court denied our challenge for cause for that particular juror. We had to exercise a peremptory challenge. That's the same complaint that we have about Prospective Juror No. 43, Gordon. We had made a challenge for cause, which was denied, as well as 89, Ms. Weems, our challenge for cause was denied, and we had to use a peremptory challenge on each of those three jurors.

In the next portion, we objected to the state's challenge for cause, which was granted, on Juror No. 88, CURTIS SHORTHAND REPORTING - 817/467-4556

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And I would just point out that we're not just asking for these causes just to be asking for them. Juror No. 17, Umpstead; Juror No. 37, Burns; Juror No. 24, Walker; Juror No. 29, Crawford; 59, Martin; 75, Allen; and 74, Harris; and 61, Howard are all jurors that the Court excused, based on the state's challenge for cause, and we didn't object to those jurors that I just listed. They all had -- I forget exactly what their reasons were, but they were all excused after the state had questioned these jurors and we feel like we've been fair and just in our requests for the Court to deny the state's challenges. So for those reasons, we would ask for five additional peremptory challenges.

MS. HARTMAN: May I respond just briefly, Your Honor?

THE COURT: I'm going to deny it, but --

MS. HARTMAN: I was just going to say that it's not timely at this time, since there are remaining strikes available to the defense.

THE COURT: Right. My understanding is we have an agreement that there are three -- you have three peremptory challenges left at this point.

MR. RAY: I believe that's correct, Judge.

THE COURT: Okay.

MR. RAY: In fact, I know that's correct.

THE COURT: I will withhold ruling on your CURTIS SHORTHAND REPORTING - 817/467-4556

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09:15:32 1 Ms. Vitek.

09:15:36 2 And finally -- I only have five. I'm requesting
09:15:40 3 for five. I just read my notes.

09:15:42 4 And, finally, Juror No. 36, Enlow -- and I know
09:15:46 5 this was Judge Gill's act, Judge Gill excused this juror, prior
09:15:50 6 to any conversation with the state or the defense, excused her
09:15:56 7 based on 35 -- excuse me -- based on 35.03. The juror called,
09:16:02 8 and Judge Gill had a conversation with him. I don't know what
09:16:06 9 the particulars are, but he excused the juror, but it was my
09:16:08 10 position that, at the time, which I voiced it to Judge Gill,
09:16:14 11 that what he said at the time was I'll run out of peremptories,
09:16:20 12 if I remember correctly, but it was my position that she was
09:16:24 13 excused, because she could not be here at her designated time to
09:16:30 14 be interviewed by the Court, not that she couldn't be here
09:16:30 15 during the trial.

09:16:34 16 And she was excused without any input from us
09:16:38 17 and my position was then and now is that we could have taken her
09:16:42 18 out of order and exercised peremptory challenges at the time
09:16:44 19 that she would have been needed. In other words, we could have
09:16:46 20 brought her in the next morning, because she was excused pretty
09:16:48 21 much before the jury selection process started. She could have
09:16:52 22 come in -- he or she -- I don't know if it was a man or women --
09:16:56 23 could have come in at a different time, and we could have
09:16:58 24 exercised a peremptory challenge when we got to that point. So
09:17:02 25 that was -- that was my complaint about that.

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09:18:28 1 request until such time as you have exercised those additional
09:18:34 2 peremptories and after I've had a chance to confer with Judge
09:18:36 3 Gill, because I'm, frankly, unfamiliar with some of the
09:18:38 4 earlier --

09:18:40 5 MR. RAY: I understand.

09:18:44 6 THE COURT: So I'll -- I'll take it up next week
09:18:48 7 with Judge Gill.

09:18:50 8 MR. RAY: What day did you begin jury selection?
09:18:54 9 Was it the 25th, Judge, or was it the 2nd? You started on the
09:18:58 10 2nd, didn't you?

09:19:02 11 MR. RICHARD: I believe it was the 2nd, Tuesday,
09:19:06 12 yes.

09:19:08 13 MR. RAY: I'll try to backdate that and see what
09:19:10 14 prospective juror you started on.

09:19:14 15 MR. RAY: My guess is that it was somewhere in
09:19:16 16 the 50s.

09:19:18 17 THE COURT: Well, I'll withhold the ruling until
09:19:20 18 later next week or until such time as you've exhausted all of
09:19:24 19 your peremptories.

09:19:28 20 MR. RAY: Okay. Thank you, Judge.

09:19:30 21 THE COURT: Are we ready for Ms. --

09:19:32 22 MS. HARTMAN: Greene.

09:19:32 23 THE COURT: -- Greene?

09:19:34 24 MS. HARTMAN: The state is ready.

09:19:36 25 MR. MOORE: We're ready.

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09:19:38 1 THE COURT: Okay. Susan Greene.
 09:19:38 2 (Venireperson Greene enters the proceedings.)
 09:20:00 3 THE COURT: Ms. Greene, right up here, please.
 09:20:02 4 Okay. How are you this morning?
 09:20:04 5 VENIREPERSON GREENE: Good. How are you?
 09:20:06 6 THE COURT: That chair does not move forwards or
 09:20:08 7 backwards, but it does swivel, so kind of bend yourself in
 09:20:12 8 there.
 09:20:12 9 VENIREPERSON GREENE: Okay.
 09:20:12 10 THE COURT: You might need to pull that
 09:20:14 11 microphone up to you.
 09:20:18 12 VENIREPERSON GREENE: Okay. How is that?
 09:20:18 13 THE COURT: That's good, yeah.
 09:20:22 14 Let me begin, Ms. Greene, by introducing myself.
 09:20:24 15 My name is David Richards, and I'm a visiting judge here in
 09:20:30 16 Fort Worth. I'm not the elected judge of this court. That
 09:20:30 17 would be Judge Bob Gill, and he's going to be presiding over the
 09:20:34 18 trial of this case. I'm just helping with the jury selection
 09:20:36 19 process.
 09:20:36 20 VENIREPERSON GREENE: Okay.
 09:20:38 21 THE COURT: Don't be intimidated by the fact
 09:20:40 22 that there is someone looking down at you in the witness box and
 09:20:44 23 there are lawyers present in the courtroom. This is a very
 09:20:48 24 informal procedure that we go through in death penalty cases to
 09:20:52 25 pick the jurors for that case.
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09:22:26 1 question and your answer, and that will be easier for the court
 09:22:30 2 reporter, because she can't take down two people talking at the
 09:22:34 3 same time. Okay?
 09:22:34 4 VENIREPERSON GREENE: (Nods.)
 09:22:36 5 THE COURT: Let me begin by introducing the
 09:22:38 6 attorneys that you'll be hearing from this morning. These will
 09:22:42 7 be the same attorneys at the trial of the case.
 09:22:44 8 Tim Curry is the elected District Attorney for
 09:22:48 9 Tarrant County. He's not present here. That's more of an
 09:22:50 10 administrative-type position. He's normally represented in the
 09:22:54 11 courtroom by an assistant district attorney, and today we have
 09:22:58 12 two of his assistants, Ms. Michele Hartman --
 09:23:00 13 MS. HARTMAN: Good morning.
 09:23:02 14 THE COURT: -- and Ms. Lisa Callaghan.
 09:23:04 15 MS. CALLAGHAN: Good morning.
 09:23:04 16 THE COURT: And they are going to be the
 09:23:06 17 prosecutors in this case.
 09:23:08 18 The defense attorneys are two Fort Worth area
 09:23:10 19 attorneys, Mr. Tim Moore --
 09:23:12 20 MR. MOORE: Good morning.
 09:23:12 21 VENIREPERSON GREENE: Good morning.
 09:23:14 22 THE COURT: -- and Mr. Bill Ray.
 09:23:14 23 MR. RAY: Hi, Ms. Greene. How are you?
 09:23:14 24 VENIREPERSON GREENE: Good.
 09:23:18 25 THE COURT: And the defendant in this case is
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09:20:56 1 Normally, in a non-death penalty case, we bring
 09:20:58 2 all of the prospective jurors in at one time and talk to them as
 09:21:04 3 a group, but because of the serious nature of the potential
 09:21:08 4 punishment in this type of case, we bring the prospective jurors
 09:21:10 5 in one at a time and talk to them.
 09:21:12 6 What's going to happen this morning is the DA's
 09:21:16 7 office is going to have a chance to talk to you and tell you a
 09:21:20 8 little bit about the law that would apply in a capital murder
 09:21:22 9 case and find out whether you would make a fair and impartial
 09:21:26 10 juror and be able to comply with that law. Then the defense
 09:21:30 11 will have a similar opportunity to be talking to you.
 09:21:34 12 A couple of ground rules. You may have noticed
 09:21:34 13 that the court reporter is taking down everything that I say.
 09:21:38 14 She is going to need to also take down everything that you say
 09:21:42 15 and that the attorneys say. So try to make all of your answers
 09:21:46 16 audible. Try to avoid the shaking of the head and nodding of
 09:21:50 17 the head, yes or no and, also, try to avoid the uh-huhs and
 09:21:58 18 huh-uh answers, because that's very difficult to read, even if
 09:22:04 19 she's able to take it down correctly.
 09:22:04 20 VENIREPERSON GREENE: Okay.
 09:22:06 21 THE COURT: In addition, try to avoid talking
 09:22:10 22 over the attorneys' questions. In normal conversation, you know
 09:22:14 23 what it is you're being asked. Sometimes, if you're like me,
 09:22:20 24 you'll go ahead and give an answer before the question is out.
 09:22:22 25 Try to avoid that. Put a little bit of a pause between their
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09:23:18 1 Mr. Billy Jack Crutsinger. And, again, this is a case in which
 09:23:26 2 the state is seeking the death penalty. They're going to talk
 09:23:30 3 to you about the law. Your only obligation really is to give
 09:23:36 4 honest and fair answers to their -- to their questions. It's
 09:23:40 5 not a test. There is no right or wrong answer, so just be
 09:23:44 6 honest with the attorneys.
 09:23:46 7 This procedure is part of a trial that's called
 09:23:48 8 voir dire, which is the Texas pronunciation of the French term,
 09:23:54 9 which means to speak the truth, and they are interviewing all of
 09:23:58 10 the prospective jurors who were in that room with you initially,
 09:24:02 11 so this is a very lengthy process. So it also gives you an
 09:24:08 12 opportunity, if you have any questions about what's going on
 09:24:10 13 here, to ask them about that and get your questions answered.
 09:24:14 14 Okay?
 09:24:14 15 VENIREPERSON GREENE: (Nods.)
 09:24:16 16 THE COURT: There is an oath that I need to give
 09:24:18 17 you that's required of all perspective jurors, so if you would,
 09:24:22 18 raise your right hand.
 09:24:22 19 SUSAN LYNETTE GREENE,
 09:24:22 20 having been duly sworn to make true answers to such questions as
 09:24:22 21 may be propounded by the Court or under its direction, touching
 09:24:22 22 upon her service and qualification as a juror, gave answers as
 09:24:22 23 follows:
 09:24:32 24 THE COURT: Okay. Very good. With that, I will
 09:24:34 25 turn it over to the DA's office.
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09:24:36 1 MS. CALLAGHAN: Thank you, Your Honor.
 09:24:36 2 VOIR DIRE EXAMINATION
 09:24:38 3 BY MS. CALLAGHAN:
 09:24:38 4 Q. Ms. Greene, how are you doing this morning?
 09:24:40 5 A. Good.
 09:24:40 6 Q. As the Judge told you, my name is Lisa Callaghan and
 09:24:42 7 together with Michele Hartman, we represent the State of Texas,
 09:24:46 8 and what we're here doing today is we're selecting a capital
 09:24:50 9 murder jury in a case in which the state is seeking the death
 09:24:52 10 penalty. Okay?
 09:24:54 11 Now, what we're going to be doing this morning
 09:24:56 12 is we're going to be -- I'm going to put up some stuff here
 09:25:00 13 relating to the law of capital murder, and we're going to be
 09:25:02 14 talking about that law to make sure, first of all, that if you
 09:25:06 15 are a juror, you understand that law and you're comfortable with
 09:25:08 16 it. Okay? It's not like a high school test. You would still
 09:25:12 17 get a charge with all of the law in it. You don't have to
 09:25:14 18 memorize it, but just to make sure you understand it and that
 09:25:18 19 you're comfortable with it at such time. Okay? And we're going
 09:25:22 20 to find out if you agree with the law and if not, if you
 09:25:24 21 disagree with it, would that prevent you from being able to
 09:25:28 22 follow the law. Okay?
 09:25:28 23 A. Okay.
 09:25:30 24 Q. We're also going to find out if you've had any
 09:25:30 25 personal experiences or personal feelings that might impact you
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09:25:32 1 in being a fair and impartial juror in this case. Okay?
 09:25:36 2 A. Okay.
 09:25:38 3 Q. So it's very important, two things; make sure before
 09:25:40 4 you leave here that you understand all of this law, okay,
 09:25:42 5 because you won't have a chance to talk to us about it; and the
 09:25:46 6 second thing is, even -- if something is bugging you or you
 09:25:50 7 think it might affect you, even if I don't ask, be sure and
 09:25:52 8 volunteer it. Let us know, and we'll talk about it. Okay?
 09:25:56 9 A. Okay.
 09:25:58 10 Q. Let's talk a little bit about timing. We anticipate
 09:26:00 11 this case will go to trial the week of September 22nd, and it
 09:26:04 12 could take anywhere from five days to two weeks to try. Is
 09:26:08 13 there anything about that time period that would be a problem
 09:26:10 14 for you?
 09:26:12 15 A. Not that I'm aware of at this time.
 09:26:14 16 Q. Okay. Could you pull the microphone a little closer
 09:26:18 17 to your mouth? Your voice is a little soft.
 09:26:22 18 THE COURT: The chair won't move. It's stuck to
 09:26:26 19 the floor.
 09:26:26 20 VENIREPERSON GREENE: Is that better?
 09:26:26 21 Q. (By Ms. Callaghan) That's much better. I've got
 09:26:26 22 some upper respiratory mess this morning. If my voice gets too
 09:26:32 23 low, let me know, and I'll try to raise it. Okay?
 09:26:34 24 The second thing is some portion of the trial,
 09:26:36 25 the jury might be sequestered, meaning that you would have to
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09:26:38 1 stay in a hotel and not communicate much with the outside world.
 09:26:44 2 Usually, that's during deliberations, not when the evidence is
 09:26:46 3 coming in. Okay. Do you feel like that would be a problem for
 09:26:50 4 you?
 09:26:50 5 A. I have four children at home, but they're all
 09:26:52 6 teenagers. I have one in second grade but, you know, I could
 09:26:56 7 probably make arrangements.
 09:26:56 8 Q. Okay. You're married?
 09:26:58 9 A. Uh-huh, I am.
 09:27:00 10 Q. If you would have to be on jury service and have to
 09:27:02 11 be deliberated -- or sequestered during deliberations, would
 09:27:06 12 your seven-year-old be unsupervised or improperly supervised
 09:27:10 13 during that period of time, or would you be able to make
 09:27:14 14 arrangements for the child's proper supervision?
 09:27:18 15 A. I could make arrangements.
 09:27:18 16 Q. You feel like you could?
 09:27:20 17 A. Yes.
 09:27:20 18 Q. All right. The order of trial, basically, is like
 09:27:26 19 this -- have you been a juror before?
 09:27:28 20 A. No.
 09:27:28 21 Q. No, you haven't. Okay. Well, this is the way it
 09:27:30 22 goes, then. The trial process is separated, basically, into two
 09:27:36 23 mini-trials. Okay?
 09:27:38 24 The first mini-trial, the first section, has to
 09:27:40 25 do with guilt or innocence, and in that section of the trial,
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09:27:44 1 all you hear is evidence relating to whether the person
 09:27:46 2 committed the crime or not. Okay?
 09:27:48 3 A. Okay.
 09:27:50 4 Q. There is argument, opening statement, evidence comes
 09:27:52 5 in, closing argument and the jury deliberates on that portion.
 09:27:58 6 If you find him not guilty, of course, that's it; but if they
 09:28:00 7 find him guilty, then the exact same procedure is followed the
 09:28:04 8 second time in the punishment phase. Okay?
 09:28:06 9 A. Okay.
 09:28:08 10 Q. In that phase of the trial, you get to hear evidence
 09:28:10 11 of the person's background or history, their character, whether
 09:28:14 12 or not they've had a previous criminal history, that sort of
 09:28:18 13 thing. It's like the first part is a snapshot of one period of
 09:28:22 14 time, but the second part is the whole photo album, so you can
 09:28:26 15 place that crime in the context of their whole life. Does that
 09:28:30 16 make sense to you?
 09:28:30 17 A. Yes.
 09:28:30 18 Q. Okay. All right. The state goes first in
 09:28:32 19 everything. We go first in argument, first in evidence, because
 09:28:36 20 we have the burden of proof. We must prove that the defendant
 09:28:40 21 is guilty beyond a reasonable doubt.
 09:28:44 22 The defendant has a presumption of innocence.
 09:28:46 23 He is cloaked in that presumption. It doesn't mean he is
 09:28:50 24 factually innocent. It means he is presumed to be so, unless
 09:28:52 25 and until the state can meet its burden of proving the case
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09:28:58 1 beyond a reasonable doubt and, at that point, and only at that
 09:29:00 2 point can you find him guilty. Okay? Does that make sense to
 09:29:02 3 you?
 09:29:02 4 A. Yes.
 09:29:02 5 Q. Okay. Now, there is no set definition of beyond a
 09:29:06 6 reasonable doubt, but what we know about it is that it does not
 09:29:10 7 mean beyond any doubt, all doubt or 100 percent doubt. Does
 09:29:14 8 that make sense to you?
 09:29:18 9 A. Could you say that again?
 09:29:22 10 Q. Okay. All right. What we know about beyond a
 09:29:24 11 reasonable doubt is that it's not the same thing, that it's not
 09:29:28 12 the state's burden to prove something beyond any doubt, all
 09:29:32 13 doubt, 100 percent doubt.
 09:29:34 14 A. Okay. I understand.
 09:29:36 15 Q. In order to know something 100 percent, how would you
 09:29:38 16 have to know?
 09:29:42 17 A. I guess by the evidence or what's in front of me to
 09:29:46 18 see, you know --
 09:29:46 19 Q. Okay. You don't think to know something beyond any
 09:29:50 20 doubt at all, you would have to see it yourself, because when
 09:29:54 21 you're taking in evidence, you're basically taking in what other
 09:29:58 22 people tell you, people who generally do not know? Do you see
 09:30:00 23 what I mean?
 09:30:02 24 A. Yes, I do.
 09:30:02 25 Q. Does that make sense to you?
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09:30:04 1 A. Yes, I do.
 09:30:04 2 Q. Okay. You see the distinction?
 09:30:06 3 A. Yes.
 09:30:06 4 Q. Okay. Beyond a reasonable doubt to you is what you
 09:30:06 5 define it as. Okay. There is no set definition, but what it is
 09:30:12 6 not is all the way to 100 percent, beyond any doubt or all
 09:30:16 7 doubt. Okay. Does that make sense to you?
 09:30:18 8 A. Yes.
 09:30:18 9 Q. Okay. Do you think that you could follow that burden
 09:30:20 10 and require the state to prove its case to you beyond a
 09:30:24 11 reasonable doubt?
 09:30:26 12 A. Yes.
 09:30:26 13 Q. Okay. Do you think you would require that the state
 09:30:28 14 prove the case to you to 100 percent beyond any doubt or all
 09:30:34 15 doubt?
 09:30:36 16 A. I would like for it to be that, but I -- you know,
 09:30:44 17 I'm not sure, I guess.
 09:30:46 18 Q. Okay. What?
 09:30:48 19 A. Yes. I guess, I -- I don't have a -- I would have to
 09:30:52 20 see, you know.
 09:30:52 21 Q. Okay. Here is -- let me go through that one more
 09:30:56 22 time. Okay?
 09:31:00 23 Do you think it would be possible for me to
 09:31:02 24 prove anything in the world to you to 100 percent?
 09:31:06 25 A. No.
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09:31:06 1 Q. Okay. Would you require, though, even though you
 09:31:10 2 know that's not the state's burden, that I prove it to you to
 09:31:12 3 100 percent in order for you to believe it?
 09:31:18 4 A. No.
 09:31:20 5 Q. Does that make sense to you?
 09:31:22 6 A. Yes.
 09:31:22 7 Q. Okay. Do you understand what I'm talking about?
 09:31:24 8 A. Yes.
 09:31:24 9 Q. Okay. Because it's not fair to place on the state an
 09:31:26 10 impossible burden. Do you see what I mean?
 09:31:30 11 A. Yes.
 09:31:30 12 Q. Beyond a reasonable doubt means a doubt that is based
 09:31:32 13 on reason and on the evidence in the case. Some people might
 09:31:36 14 say -- and I'm not making fun, just by way of example -- you
 09:31:42 15 know, it's always possible that aliens from another planet were
 09:31:48 16 x-raying messages into that person's mind and making them act
 09:31:48 17 the way they were, you know. It's possible that person has the
 09:31:52 18 same problem as my cousin, Joe, and he's mentally ill, you know.
 09:31:54 19 It's possible -- do you see what I mean?
 09:31:56 20 A. Yes.
 09:31:58 21 Q. That's got nothing to do with the evidence. Is it a
 09:32:00 22 doubt based on the evidence which you heard? Does that make
 09:32:04 23 sense to you?
 09:32:04 24 A. Yes.
 09:32:04 25 Q. Is that a problem for you?
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09:32:06 1 A. No.
 09:32:06 2 Q. Okay. All right. Do you feel like you understand
 09:32:08 3 that?
 09:32:08 4 A. Yes.
 09:32:10 5 Q. Okay. All right. Now, did you get a witness list
 09:32:14 6 outside?
 09:32:16 7 A. I did.
 09:32:16 8 Q. You did. Did you know anyone on that list?
 09:32:18 9 A. No.
 09:32:18 10 Q. Okay. All right. Let's talk a little bit about the
 09:32:20 11 elements of capital murder. I don't know if you know this or
 09:32:30 12 not -- most people not involved with the legal system usually
 09:32:34 13 don't -- but murder is actually a different offense than capital
 09:32:38 14 murder. They are two completely different offenses really,
 09:32:42 15 because most people basically know what murder is, but they
 09:32:46 16 don't necessarily know that a capital murder is a regular
 09:32:50 17 murder, plus an aggravating or special circumstance. Of the --
 09:32:54 18 of the whole body of murders that occur in Tarrant County in any
 09:32:58 19 given year, only a very small percentage are capital, because it
 09:33:04 20 requires that aggravating or special circumstance. Okay?
 09:33:06 21 A. Okay.
 09:33:06 22 Q. Does that make sense to you?
 09:33:08 23 A. Yes.
 09:33:10 24 Q. Okay. Now, here are the elements of a regular
 09:33:16 25 murder. This isn't capital. This is just a regular murder
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09:33:20 1 statute. Okay? A defendant in Tarrant County, Texas, on or
09:33:22 2 about a certain date, intentionally caused the death of an
09:33:24 3 individual by -- fill in the blank -- shooting them, stabbing
09:33:28 4 them, drowning them, whatever you did to cause their death.
09:33:32 5 Okay? That's a regular murder, for lack of a better term. I
09:33:38 6 don't mean to say it's not important or not significant, but to
09:33:42 7 distinguish it from capital murder. Okay?

09:33:46 8 So what makes a murder capital? Well, this
09:33:50 9 isn't the whole list of how a capital murder can be committed,
09:33:54 10 but it's a part of it to give you an idea basically of what
09:33:56 11 we're talking about. Okay? Intentionally killing a child under
09:34:00 12 six years of age is a capital murder. Intentionally killing a
09:34:02 13 police officer or fireman in the line of duty is a capital
09:34:06 14 murder.

09:34:08 15 Do you remember reading about the Texas Seven
09:34:10 16 when they escaped from the penitentiary and murdered that police
09:34:14 17 officer when they were robbing the Oshman's?

09:34:18 18 A. Yes.

09:34:18 19 Q. That's an example of a capital murder case, because
09:34:20 20 he was in the line of duty and trying to do his duty and stop
09:34:24 21 them from robbing the Oshman's when they committed the offense.
09:34:28 22 Okay? Intentionally killing during the course of aggravated
09:34:32 23 robbery, kidnapping or sexual assault. An example of this might
09:34:34 24 be a convenience store robbery where someone murdered the clerk
09:34:38 25 during the course of robbery. Okay? That's an example of that.
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09:34:40 1 Intentionally killing more than one person in the same criminal
09:34:44 2 transaction. That's the one we're going to focus on here.
09:34:46 3 Okay?

09:34:48 4 What we mean is a person intentionally killed
09:34:50 5 one person, and by intent, we mean it was their conscious
09:34:54 6 objective or desire to cause the result. They meant to do it,
09:34:58 7 no self-defense, no accident, nothing like that. They meant to
09:35:04 8 do it. Okay?

09:35:06 9 A. Okay.

09:35:06 10 Q. Intentional -- intentionally killed one person and in
09:35:10 11 the same course of the same criminal transaction, they killed a
09:35:14 12 second person. Okay?

09:35:16 13 A. Okay.

09:35:16 14 Q. Okay. So let's go on to the elements of capital
09:35:22 15 murder. Okay? There we go. So as you can see, it's kind of a
09:35:26 16 combination of the two.

09:35:26 17 Defendant, Tarrant County, Texas, on or about a
09:35:28 18 certain date, intentionally caused the death of more than one
09:35:30 19 person in the same criminal transaction by, boom, fill in the
09:35:34 20 blank. Okay?

09:35:36 21 Now, let me explain this. In each criminal
09:35:42 22 case, we have a piece of paper, not this one, but just a piece
09:35:48 23 of paper, okay, in which these charges against a person are
09:35:52 24 spelled out, the victim's name, how they were killed,
09:35:54 25 everything. This is called an indictment, and we spell it out
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09:35:58 1 like that so that both sides, the state and the defense, will
09:36:02 2 have notice of what it is the state is required to prove beyond
09:36:08 3 a reasonable doubt in order to convict the person. Okay?

09:36:12 4 A. Okay.

09:36:12 5 Q. And that piece of paper, that indictment, is returned
09:36:16 6 by a Grand Jury on a certain day. When they true bill it and
09:36:20 7 they say, Okay, we can go on to the trial courts to be tried,
09:36:24 8 they return it that day. In order to prove -- do you see where
09:36:28 9 it says, On or about a certain date? That indictment will have
09:36:32 10 a certain date, okay, on it, on or about X date, 2003, in
09:36:38 11 Tarrant County, Texas, this person did this. Okay?

09:36:40 12 A. Okay.

09:36:42 13 Q. We're not required to prove any particular date.
09:36:44 14 We're not even required to prove the date that's in the
09:36:48 15 indictment. All we have to prove is that the offense occurred
09:36:52 16 before the date that that Grand Jury returned that indictment
09:36:54 17 and within the statute of limitation. Okay?

09:36:58 18 A. Okay.

09:36:58 19 Q. A statute of limitations is a set number of years
09:37:02 20 after which a crime is committed that we have to prosecute or
09:37:04 21 we're out. Okay?

09:37:06 22 A. Okay.

09:37:06 23 Q. There is no statute for murder, though. It's -- it's
09:37:08 24 really the only offense in the Code that doesn't have a statute
09:37:12 25 of limitation. Okay? So all we have to prove in a murder case
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09:37:14 1 is that it occurred before the date of the return of the
09:37:16 2 indictment.

09:37:18 3 So if an indictment was returned today,
09:37:20 4 September 12th, 2003, any day before that is fine, as long as
09:37:26 5 it's physically possible, if you see what I mean.

09:37:30 6 A. Yes.

09:37:30 7 Q. You know, if the defendant hadn't been born yet, that
09:37:32 8 might be a problem, but you see what I mean?

09:37:34 9 A. Yes.

09:37:34 10 Q. As long as it's possible it occurred on that date,
09:37:36 11 you don't have to pick any particular date. Does that make
09:37:40 12 sense to you?

09:37:40 13 A. Yes.

09:37:40 14 Q. Okay. I told you about intentionally. Okay? Their
09:37:44 15 conscious objective or desire to cause the result. They meant
09:37:46 16 to do it. Suppose I come up to you and do this(gestures). What
09:37:52 17 does that mean?

09:37:52 18 A. It's a handshake.

09:37:54 19 Q. Suppose I sit here and go back like this(gestures).
09:37:56 20 What does that mean?

09:37:56 21 A. You raise your hand to ask a question.

09:38:00 22 Q. Okay. Would you agree that sometimes you can tell a
09:38:02 23 person's intent by what they do, even though they don't say it?

09:38:06 24 A. Yes.

09:38:06 25 Q. Does that make sense to you?

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09:38:06 1 A. Yes.
 09:38:08 2 Q. All right. Now, do you watch the law shows?
 09:38:10 3 A. All the time.
 09:38:12 4 Q. All right. Then -- okay. We've got a good one here.
 09:38:16 5 You know what I'm talking about, then, when I say that -- you
 09:38:18 6 know on all the law shows, they talk about premeditated murder?
 09:38:22 7 A. Right, yes.
 09:38:22 8 Q. Okay. And by premeditation, what I'm talking about
 09:38:24 9 is something that you planned out or had forethought about in
 09:38:28 10 advance..
 09:38:28 11 A. Yes.
 09:38:30 12 Q. Okay. It may be 15 minutes in advance, it may be
 09:38:32 13 three hours in advance, it may be three days or three years in
 09:38:36 14 advance, but it means in advance of the crime. Does that make
 09:38:38 15 sense to you?
 09:38:40 16 A. Yes.
 09:38:40 17 Q. Okay. You'll notice premeditation is not on that
 09:38:46 18 list, neither is motive. That's because these are the elements
 09:38:54 19 of the crime that we have to prove beyond a reasonable doubt.
 09:38:58 20 Okay? We have to prove these elements to you, but we don't have
 09:39:00 21 to prove anything else. We don't have to prove premeditation.
 09:39:06 22 That's not required of us.
 09:39:08 23 We have to prove intent, that they intentionally
 09:39:12 24 did it, but intent, in certain circumstances, can arise like
 09:39:14 25 that(snaps fingers). Okay?
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09:39:18 1 Suppose you and I are driving down the road in
 09:39:20 2 our separate cars and a road-rage case happens. Somebody gets
 09:39:24 3 mad at the other person or I get mad at you because of something
 09:39:26 4 you did on the road and I have a gun in the car and I pull it
 09:39:30 5 out and, boom, kill you. Okay? Can you see where in certain
 09:39:34 6 circumstances intent can arise very quickly and be acted on just
 09:39:38 7 as quickly?
 09:39:38 8 A. Yes.
 09:39:40 9 Q. Okay. The law requires that we prove intent, but it
 09:39:42 10 doesn't require that we prove preplanning or forethought. Okay?
 09:39:48 11 Now, that's not to say that you can't hear evidence of
 09:39:50 12 premeditation. You may hear it and be able to use it in
 09:39:56 13 deciding, well, yes, the element was -- the intentional element
 09:39:58 14 is satisfied, because this person planned it out in advance.
 09:40:02 15 Okay. Do you see what I mean?
 09:40:04 16 A. Yes.
 09:40:04 17 Q. Or you might be able to consider it in the punishment
 09:40:06 18 phase because, to you, it might make the crime worse or it might
 09:40:10 19 make the crime not as bad depending on how you see it. Do you
 09:40:12 20 see what I mean?
 09:40:12 21 A. Yes.
 09:40:12 22 Q. Okay. But the state is not required to prove it as
 09:40:16 23 an element. Can you follow that law?
 09:40:18 24 A. Yes.
 09:40:18 25 Q. Okay. You'll notice motive, no requirement that we
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09:40:22 1 prove the person's motive in doing what they did. Do you think
 09:40:26 2 we always know why a person commits a criminal act?
 09:40:30 3 A. No.
 09:40:30 4 Q. Okay. An example, many years ago, probably before
 09:40:32 5 your -- yeah, before you were even born, do you remember there
 09:40:36 6 was a man got gown at UT got in the UT tower and shot a bunch of
 09:40:42 7 people, Charles Whitman? Do you think we ever really will know
 09:40:42 8 why he did that?
 09:40:46 9 A. No.
 09:40:46 10 Q. That's why the state has no burden of proving motive.
 09:40:48 11 It just isn't always possible to prove why a person did that, as
 09:40:52 12 long as you can prove that they intentionally did it. Does that
 09:40:54 13 make sense to you?
 09:40:56 14 A. Yes.
 09:40:56 15 Q. Okay. All right. Now, I think we've pretty much
 09:40:58 16 gone over the law that relates to capital murder. Is there
 09:41:02 17 anything that you need to ask about or that you're unsure of?
 09:41:06 18 A. No.
 09:41:08 19 Q. Okay. Everything seems fairly clear to you?
 09:41:10 20 A. Yes.
 09:41:10 21 Q. Okay. Very good.
 09:41:14 22 Now, if you find someone not guilty of capital
 09:41:16 23 murder, that, of course, is the end of it. They go home.
 09:41:20 24 If you find someone guilty of capital murder,
 09:41:22 25 though, that's when you proceed to the punishment phase. That's
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09:41:24 1 your second trial, where everything starts all over again.
 09:41:28 2 Okay?
 09:41:30 3 Let's talk a little bit about the possible
 09:41:32 4 punishments in a capital murder case. Okay? Capital murder is
 09:41:40 5 different than regular offenses in this state for a number of
 09:41:42 6 reasons, but one reason it's different is because there is only
 09:41:46 7 two possible punishments, life or death. Okay? There is no
 09:41:52 8 range, no possibilities in the middle like in most offenses.
 09:41:56 9 There is just life or death. Okay?
 09:42:00 10 By death, what we're talking about is lethal
 09:42:02 11 injection. Okay? By life, what we're talking about is that the
 09:42:06 12 person must serve 40 calendar years, day for day, no good time,
 09:42:12 13 no getting out, and at the end of 40 years, then they are
 09:42:16 14 eligible for parole. Okay?
 09:42:20 15 A. Yes.
 09:42:20 16 Q. The Board of Pardons and Paroles, at that time, can
 09:42:22 17 look at them and they may decide yes and they may decide no, but
 09:42:26 18 at that point, they can at least be looked at. Okay?
 09:42:30 19 A. Okay.
 09:42:30 20 Q. Does that make sense to you?
 09:42:32 21 A. Yes.
 09:42:32 22 Q. Okay. So those are the choices. Here is how you go
 09:42:34 23 about it: In the punishment phase, after all of the evidence
 09:42:38 24 comes in and both sides -- if the defense desires to put on any
 09:42:42 25 evidence -- they don't have to, they have no burden, but after
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09:42:44 1 all of the evidence has come in and closing arguments are
 09:42:48 2 finished and all of the evidence part is done, then the judge
 09:42:52 3 gives you a document, some papers that are called the court's
 09:42:56 4 charge, and those documents have in them all of the law that you
 09:43:00 5 will need to govern your deliberations and their background.
 09:43:04 6 Okay? And in those pieces of paper are two questions. They're
 09:43:08 7 called special issues. Okay? And if you answer those questions
 09:43:12 8 one way, the judge has to impose a life sentence; if you answer
 09:43:18 9 those questions another way, the judge has to impose the death
 09:43:22 10 sentence. Okay?

09:43:22 11 A. Okay.

09:43:24 12 Q. He doesn't have any leeway in that or personal
 09:43:26 13 choice. He has to do it based on the jury's decision. Okay?

09:43:28 14 A. Okay.

09:43:30 15 Q. So I'm going to present to you the questions in the
 09:43:32 16 same order they would be presented to you in the jury room.
 09:43:36 17 Okay?

09:43:36 18 A. Okay.

09:43:38 19 Q. And I want you -- this first one, go ahead and read
 09:43:40 20 it to yourself, and then we'll talk about it.

09:43:56 21 A. Okay.

09:43:58 22 Q. Does that make sense?

09:43:58 23 A. Yes.

09:44:00 24 Q. Okay. What does that mean to you?

09:44:02 25 A. That if they were to be released, would they harm
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09:44:06 1 others again or would they commit the same acts of crime. I
 09:44:10 2 mean, would they be a threat.

09:44:12 3 Q. Would they be a continuing threat to society?

09:44:16 4 A. Right.

09:44:18 5 Q. Okay. All right. Well, let's talk about some of the
 09:44:20 6 underlying terms in there.

09:44:22 7 A. Okay.

09:44:22 8 Q. Do you find beyond a reasonable doubt, you'll notice
 09:44:24 9 that the state has the same burden of proof in this question as
 09:44:28 10 they did back in guilt/innocence. We must prove that to you
 09:44:32 11 beyond a reasonable doubt, okay, that there is a probability.
 09:44:38 12 Probability is not directly defined for you. What we know about
 09:44:42 13 it is that it's more than a possibility, but less than a
 09:44:44 14 certainty. Okay?

09:44:46 15 Have you ever flown on an airplane before?

09:44:48 16 A. Yes.

09:44:50 17 Q. Okay. Did you consider it a possibility when you got
 09:44:52 18 on that airplane that it would crash?

09:44:54 19 A. Yes.

09:44:54 20 Q. Did you consider it a certainty when you got on that
 09:44:58 21 airplane it would crash?

09:44:58 22 A. No.

09:44:58 23 Q. Are you kind of a nervous flyer?

09:45:02 24 A. Yeah.

09:45:02 25 Q. Me, too.

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09:45:04 1 A. Very much so.

09:45:06 2 Q. All right. So probability is somewhere in between
 09:45:08 3 those two. Okay? Where in there it is is up to you. That the
 09:45:12 4 defendant would commit criminal acts of violence. The law
 09:45:16 5 contemplates that a criminal act of violence can be anything
 09:45:18 6 from a property crime like arson, if you find setting, you know,
 09:45:24 7 on fire things to be violent, all the way up to capital murder
 09:45:28 8 and anything in between, simple assault, aggravated assault,
 09:45:34 9 robbery, aggravated robbery, kidnapping, injury to a child,
 09:45:38 10 injury to the elderly, whatever, sexual assault, aggravated
 09:45:44 11 sexual assault. It's up to you which of those or any of those
 09:45:48 12 that you find to be a criminal act of violence. Okay?

09:45:52 13 That would constitute a continuing threat to
 09:45:56 14 society, now, the law contemplates that you may define society
 09:46:00 15 any way you like. Okay? You could consider it the people in
 09:46:04 16 this room, Tarrant County, the State of Texas. You could even
 09:46:08 17 consider it to be people in the penitentiary, where a person
 09:46:12 18 might be likely to serve time, including other prisoners,
 09:46:16 19 guards, administrative personnel, like secretaries, people who
 09:46:22 20 are medical personnel, food handlers, psychiatric or
 09:46:26 21 psychological workers, the clergy or people who go in to give
 09:46:32 22 religious instruction to prisoners. Do you see what I mean?
 09:46:36 23 Anyone who keeps the penitentiary running.

09:46:36 24 A. Yes.

09:46:38 25 Q. Does that make sense to you?
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09:46:40 1 A. Yes.

09:46:40 2 Q. Okay. So you could include them as part of society,
 09:46:42 3 as well.

09:46:46 4 If you answer this question yes, then you go on
 09:46:50 5 to the second question, because that brings you one step closer
 09:46:54 6 to the death sentence. Okay?

09:46:56 7 So in order to answer this question yes, all 12
 09:46:58 8 of you on the jury must agree, it must be unanimous. Okay?
 09:47:04 9 However, if you answer this question no, then the judge must
 09:47:08 10 impose a life sentence, and that's the end of it. Okay?

09:47:12 11 A. Okay.

09:47:12 12 Q. In order to answer the question no, only 10 of you
 09:47:16 13 must agree, but you must agree. Okay?

09:47:18 14 A. Okay.

09:47:20 15 Q. Is all that pretty clear to you?

09:47:22 16 A. Yes.

09:47:22 17 Q. Okay. Well, then let me go back -- oh, wait a
 09:47:26 18 minute. There is one thing I want to tell you.

09:47:28 19 In deliberating on the issue, with regard to
 09:47:32 20 this special issue, the judge would give you a charge that
 09:47:36 21 basically goes as follows. Okay? All right. In deliberating
 09:47:40 22 on the issue, the jury shall consider all evidence admitted at
 09:47:44 23 the guilt or innocence stage and the punishment stage, including
 09:47:48 24 evidence of the defendant's background or character or the
 09:47:50 25 circumstances of the offense that militate for or mitigate
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09:47:54 1 against the imposition of the death penalty. Okay?

09:47:58 2 A. Okay.

09:47:58 3 Q. So what it's asking you do to do, basically, is to

09:48:02 4 consider everything that comes in as evidence in deliberating on

09:48:06 5 this special issue, not just from the first part, from the crime

09:48:10 6 itself, but also in the second part. Okay?

09:48:14 7 A. Okay.

09:48:14 8 Q. And to illustrate my point, let me give you an

09:48:16 9 example. Okay? This has nothing to do with the facts of this

09:48:20 10 case. We can't talk about the facts of this case. It's just an

09:48:22 11 example. Okay?

09:48:24 12 A. Okay.

09:48:24 13 Q. Suppose you had an individual who, when he was a

09:48:28 14 child, was sexually abused by two of his uncles. Okay? And he

09:48:32 15 grew up and got out of that and went on with his life and his

09:48:34 16 family and his job and everything else, but years later, as an

09:48:38 17 adult, he kept thinking about what his uncles had done to him

09:48:44 18 and it was very difficult for him to get beyond and, finally, he

09:48:48 19 couldn't get beyond it and he drove back hundreds of miles to

09:48:54 20 his uncles' house with a shotgun and they were both there and he

09:48:56 21 blew them away. Okay?

09:49:00 22 A. Okay.

09:49:00 23 Q. That, of course, meets the definition of capital

09:49:02 24 murder, because he killed two individuals in the same

09:49:04 25 transaction at the same time. Okay. Make sense to you?

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09:49:08 1 A. Yes.

09:49:10 2 Q. Okay. Now, in looking at the future dangerousness

09:49:12 3 issue, one individual juror might look at that set of

09:49:16 4 circumstances and say, You know what, I find that to be a

09:49:20 5 singular enough circumstance that I don't think that person

09:49:24 6 would be a future danger to society. Do you see what I mean?

09:49:28 7 A. Yes.

09:49:28 8 Q. Okay. On the other hand, punishment phase evidence

09:49:32 9 might come in that tells you, you know, this person has been

09:49:36 10 threatening anyone he thinks is a sex offender. You might look

09:49:40 11 at that same set of circumstances and say, Well, yeah, I think

09:49:44 12 this person is a future danger to society. Does that make sense

09:49:48 13 to you?

09:49:48 14 A. Yes.

09:49:50 15 Q. Okay. Do you see where any individual juror could

09:49:52 16 view that both ways? It's an open question basically. Okay.

09:49:56 17 Does that make sense to you?

09:49:58 18 A. Yes.

09:49:58 19 Q. Okay. So the question I have for you here is: Can

09:50:02 20 you envision a possible set of circumstances -- well, before I

09:50:08 21 go into that question, let me go back and ask you something. Do

09:50:14 22 you see this list of aggravating elements?

09:50:22 23 A. (Venireperson nods.)

09:50:22 24 Q. Do you agree with those aggravating elements? Do you

09:50:26 25 think it's proper that those people who commit murders like that

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09:50:28 1 should stand in jeopardy of the death penalty?

09:50:36 2 A. Yes.

09:50:38 3 Q. Suppose you were queen for a day here in Texas, could

09:50:42 4 change the laws, adds the laws, didn't have to worry about the

09:50:46 5 legislature, presuming they're all in town. Anyway, but didn't

09:50:50 6 have to worry about any of that. You could just make the law as

09:50:54 7 you saw fit. Okay?

09:50:56 8 A. Uh-huh.

09:50:56 9 Q. Would you change anything about this?

09:51:02 10 A. No.

09:51:02 11 Q. Would you add anything or should anything be

09:51:06 12 different to you?

09:51:08 13 A. Not right off the top of my head, no. I just --

09:51:12 14 Q. Okay. That's a little much to throw at you at this

09:51:14 15 hour of the morning, isn't it? Okay.

09:51:16 16 A. With one cup of coffee, yes.

09:51:18 17 Q. Generally, how do you feel about the death penalty?

09:51:22 18 A. Depending on the circumstance, I'm for it. I agree

09:51:24 19 with it.

09:51:26 20 Q. Okay. But you said depending on the circumstance.

09:51:28 21 A. Yeah.

09:51:28 22 Q. Do you think anyone who commits something on this

09:51:32 23 list necessarily should get the death penalty, or are you open

09:51:34 24 to considering whether the individual case merits it?

09:51:38 25 A. Open to consideration.

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09:51:40 1 Q. Okay. All right. Okay. Now, back to the question I

09:51:48 2 was going to ask you. Okay? Can you conceive in your mind of a

09:51:54 3 fact circumstance where having convicted someone of committing a

09:51:58 4 capital murder, intentionally killing one person and then a

09:52:02 5 second person in the same transaction --

09:52:04 6 A. Uh-huh.

09:52:04 7 Q. -- they killed at least two people, can you then

09:52:08 8 envision a situation where you would consider all of the

09:52:12 9 guilt/innocence evidence and all of the punishment evidence and

09:52:14 10 after your consideration decide, you know, my answer to this is,

09:52:18 11 no, I think that the facts of this circumstance and the

09:52:22 12 punishment facts here are unique enough that this person is not

09:52:26 13 generally going to be, in all probability, a future danger to

09:52:30 14 society. Could you envision the possibility of answering the

09:52:34 15 question that way?

09:52:34 16 A. Yes.

09:52:34 17 Q. If the facts were proper, do you think you could

09:52:38 18 actually vote that way?

09:52:38 19 A. Yes.

09:52:40 20 Q. Okay. Now, on the other hand, can you envision a

09:52:44 21 circumstance where having convicted someone and having

09:52:46 22 considered all of facts, you would then answer that question,

09:52:50 23 yes, I think based on the facts of this crime, I think this

09:52:54 24 person is a future danger?

09:53:04 25 A. I guess. I -- I'm not sure. Depending on the

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09:53:10 1 circumstances, I guess, yes.
 09:53:12 2 Q. Okay. Can you tell me why you're not sure?
 09:53:16 3 A. Well, you're throwing it at me from both sides and
 09:53:18 4 I'm trying to say -- my mind set is going one way and then
 09:53:22 5 you're swinging me the other way, so I'm trying to --
 09:53:24 6 Q. Lawyers are tricky that way.
 09:53:26 7 A. Yeah, I'm just going --
 09:53:28 8 Q. Okay. Let me tell you why I'm asking you this, and
 09:53:30 9 maybe we can just cut through all the mess and get going. Okay?
 09:53:32 10 A. Okay.
 09:53:34 11 Q. My question is: Are you open to answering that
 09:53:36 12 question either way depending on the facts?
 09:53:38 13 A. Yes, absolutely.
 09:53:38 14 Q. Okay. You don't feel like you're leaning one way or
 09:53:40 15 the other right now?
 09:53:42 16 A. No.
 09:53:42 17 Q. Okay. Can you see why it's important to the
 09:53:46 18 functioning of the system that you not be on anybody's side
 09:53:50 19 really?
 09:53:50 20 A. Yes.
 09:53:52 21 Q. But that you be willing to consider openly and fairly
 09:53:54 22 all the facts?
 09:53:56 23 A. Yes.
 09:53:56 24 Q. Does that make sense to you?
 09:53:56 25 A. Absolutely.

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09:53:58 1 Q. Is that more direct?
 09:53:58 2 A. Yes, yes.
 09:53:58 3 Q. All right.
 09:54:00 4 A. Yes, absolutely.
 09:54:02 5 Q. Okay. I can see that you're a direct sort of person.
 09:54:10 6 All right.
 09:54:12 7 Okay. Anything else about this question that
 09:54:12 8 you want to ask? All right. Now, I'm not bugging you now, am
 09:54:16 9 I?
 09:54:18 10 A. No, no. My pager is -- can I turn it off real quick,
 09:54:21 11 please?
 09:54:22 12 Q. Oh, yeah, sure.
 09:54:22 13 A. Thank you.
 09:54:24 14 (Off-the-record discussion.)
 09:54:28 15 Q. (By Ms. Callaghan) By the way, would you like some
 09:54:30 16 coffee or water or anything?
 09:54:32 17 A. No, I'm fine. Thanks.
 09:54:34 18 Q. All right. Now, why don't you read the second one to
 09:54:36 19 yourself.
 09:55:00 20 A. (Venireperson complies.)
 09:55:06 21 Q. Okay. What does that mean to you?
 09:55:16 22 A. If there was mental illness or if there was a problem
 09:55:18 23 that would say that that person didn't deserve to die, you know,
 09:55:22 24 based on his mental capabilities, I guess, or something like
 09:55:26 25 that.

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09:55:26 1 Q. Okay. Well, let me clarify one thing. If a person
 09:55:30 2 is insane, they cannot be --
 09:55:34 3 A. Tried.
 09:55:34 4 Q. -- tried, yeah, or certainly not executed.
 09:55:40 5 If a person is mentally retarded, they cannot be
 09:55:42 6 executed. Okay?
 09:55:46 7 Mental illness sometimes can be a factor and
 09:55:48 8 introduced into evidence with a person, understanding that it
 09:55:52 9 doesn't rise to the level of insanity or mental retardation.
 09:55:56 10 Okay. Does that make sense to you?
 09:55:58 11 A. Yes.
 09:55:58 12 Q. Okay. But I think what you're telling me is that
 09:56:02 13 you're getting the drift of where this question is heading.
 09:56:04 14 Now, you'll notice in this that there is no beyond a reasonable
 09:56:08 15 doubt. There is no burden of proof on this question. Okay?
 09:56:12 16 A. Okay.
 09:56:12 17 Q. There is no burden of proof on the state and, of
 09:56:14 18 course, there is never a burden of proof on the defense. Okay?
 09:56:16 19 A. Okay.
 09:56:20 20 Q. What this question is basically asking you is to
 09:56:24 21 reconsider all of the evidence that you considered before in
 09:56:28 22 answering Question No. 1.
 09:56:30 23 A. Uh-huh.
 09:56:30 24 Q. Because it's the same body of evidence you're looking
 09:56:34 25 at, but to look at it from the different viewpoint towards
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09:56:38 1 answering a different question. Before it was are they going to
 09:56:40 2 be a future danger; now, what you're looking at is the question
 09:56:46 3 of mitigation, and by mitigation, what we mean is something that
 09:56:50 4 reduces or lessens the person's moral responsibility for what
 09:56:54 5 they did, their moral blameworthiness. Okay?
 09:56:56 6 A. Okay.
 09:56:56 7 Q. And when you were talking about mental illness, you
 09:57:00 8 were on the right track. That's what we're talking about. We
 09:57:04 9 talk about mental illness. If you find it to be mitigating,
 09:57:08 10 that's up to you, but that may be one type of evidence that
 09:57:10 11 might be admitted arguing that there is mitigation. Do you see
 09:57:14 12 what I mean?
 09:57:14 13 A. Yes.
 09:57:14 14 Q. Okay. What this question basically is, is a
 09:57:18 15 fail-safe. That's why there is no burden of proof on it. It's
 09:57:22 16 one last chance before the death penalty is imposed for a jury
 09:57:26 17 to step back, take a look at everything once again and ask
 09:57:30 18 themselves, even though I've convicted this person, even though
 09:57:32 19 I've decided this person is a future danger, is there some fact
 09:57:38 20 in there, some piece of evidence that still says the just
 09:57:42 21 sentence here would be life instead of death. Okay. This is
 09:57:46 22 the one last time to reconsider and take a deep breath. Okay?
 09:57:52 23 A. Okay.
 09:57:52 24 Q. Does that make sense to you?
 09:57:54 25 A. Yes.

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09:57:54 1 Q. Okay. And, at this point, if you answered this yes,
09:57:58 2 that you think there is such a mitigating factor in there
09:58:02 3 somewhere, this gives you an opportunity to give that effect, to
09:58:10 4 bring it into light, because if you make this choice,
09:58:14 5 that -- then it stops there again and the person will be given a
09:58:16 6 life sentence. Okay?

09:58:18 7 So in order to answer it yes, only 10 of you,
09:58:22 8 once again, must agree, but you must agree. Okay?

09:58:26 9 However, if you take another look at the
09:58:28 10 evidence and decide, no, I don't think there is anything
09:58:30 11 mitigating here, then once you vote no, the judge must impose
09:58:36 12 the death penalty. Okay? That's that end of the questions. So
09:58:38 13 in order to vote no, all 12 of you must agree. It must be
09:58:44 14 unanimous. Okay. Does that make sense to you?

09:58:46 15 A. Yes.

09:58:48 16 Q. Okay. So let me ask you this: Can you -- and here
09:58:52 17 is the complicated question again. Okay? Sorry. Do you think
09:58:58 18 it's possible there is a fact circumstance out there somewhere,
09:59:00 19 facts that might be presented to you that would enable you to
09:59:04 20 answer this question yes, there is mitigation here,
09:59:10 21 understanding you've already found him guilty of killing at
09:59:14 22 least two people and you've already found they are a future
09:59:16 23 danger? Do you think it's possible for evidence to be presented
09:59:18 24 to you that would cause you to answer this question yes?

09:59:22 25 A. Yes.

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09:59:22 1 Q. Okay. On the other hand, do you think there is
09:59:24 2 evidence out there that might be presented to you that would
09:59:28 3 cause you to answer this question no?

09:59:30 4 A. Yes.

09:59:32 5 Q. Okay. So you're pretty much open to answering it yes
09:59:34 6 or no, depending on the evidence?

09:59:36 7 A. Yes, correct.

09:59:38 8 Q. Okay. Now, two other questions, and then I think
09:59:42 9 we'll be done with the death penalty stuff.

09:59:46 10 Does it seem fair to you that the death penalty
09:59:50 11 should be imposed this way, by the answering of these questions?

09:59:56 12 A. It's almost like a safeguard, to me, is what I'm
10:00:00 13 looking at it as.

10:00:04 14 Q. And does that seem proper to you or appropriate?

10:00:04 15 A. It does.

10:00:04 16 Q. Okay.

10:00:04 17 A. It's like say here it is, you've got an option.

10:00:04 18 Q. Okay. Because it isn't like you just go back and
10:00:08 19 vote life or death without any guidance.

10:00:10 20 A. Right.

10:00:10 21 Q. It's very narrowly defined. Okay?

10:00:14 22 A. Right.

10:00:14 23 Q. And that seems fair to you?

10:00:16 24 A. Yes.

10:00:16 25 Q. Okay. The second thing is this: Now, are you a

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10:00:20 1 native Texan?

10:00:20 2 A. Uh-huh, yes.

10:00:20 3 Q. You are. Okay. Boy, we've had a lot of native
10:00:24 4 Texans here in the past couple of days. You know, then, that
10:00:28 5 the death penalty in this state is a reality?

10:00:30 6 A. Yes.

10:00:30 7 Q. People are -- are executed here every year.

10:00:32 8 A. Uh-huh.

10:00:34 9 Q. Okay? It's one thing to talk about this
10:00:36 10 intellectually; it's another thing to be part of making the
10:00:40 11 decision personally.

10:00:42 12 A. Right.

10:00:42 13 Q. Are you the kind of person who could do that?

10:00:48 14 A. I don't know. I've thought about it and, you know, I
10:00:52 15 agree with it, but when it comes down to it, your heart weighs
10:00:54 16 heavy on that sort of stuff. So I'm sure I could. It's just a
10:01:00 17 hard -- it's a hard decision to make.

10:01:04 18 Q. Okay. Let me see if I understand you correctly. I
10:01:06 19 don't want to put words in your mouth, but let me make sure I
10:01:06 20 understand.

10:01:10 21 Are you saying you feel like you could do it?
10:01:12 22 It would not be an easy decision to make, but you feel like you
10:01:14 23 could ultimately do it?

10:01:16 24 A. Yes.

10:01:18 25 Q. All right. Fair enough. Is there any other
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10:01:24 1 questions you have about the way the death penalty is set up or
10:01:28 2 the questions or anything we've gone over?

10:01:30 3 A. No.

10:01:30 4 Q. Do you feel like you understand the law pretty
10:01:32 5 clearly?

10:01:32 6 A. Yes.

10:01:34 7 Q. Okay. Well, then I'm going to ask you a few more
10:01:36 8 legal questions and some off your sheet, and I'll be done.

10:01:46 9 A. Okay.

10:01:50 10 Q. Yeah, there is something I usually talk about that I
10:01:52 11 forgot this time and my co-counsel reminded me of it.

10:01:56 12 When you're considering this Special Issue
10:01:58 13 No. 2, the second special issue, what you look at in terms of
10:02:02 14 making your decision here is you look at the evidence that has
10:02:06 15 come in and you ask yourself basically three questions about it.
10:02:10 16 First of all, do you believe it? Do you think it's true? If
10:02:16 17 you do believe it, then you ask yourself, is this piece of
10:02:18 18 information mitigating? Okay? Because you remember back to the
10:02:24 19 example I gave you concerning the guy that shot his uncles?

10:02:30 20 A. (Venireperson nods.)

10:02:30 21 Q. Okay. You might hear that evidence and think to
10:02:32 22 yourself, you know, the history of child abuse between them, I
10:02:34 23 think that's mitigating. I think that lessens his moral
10:02:36 24 responsibility. The same person might look at that and say, You
10:02:42 25 know what, he served in the military during his lifetime. He
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10:02:44 1 could obviously control his conduct. He had grown up and gotten
 10:02:48 2 out of this. He could control his conduct. He was an adult.
 10:02:52 3 He could have called the police. He could have done a lot of
 10:02:54 4 things. He could have filed a lout against them. I don't think
 10:02:56 5 that's mitigating. Do you see what I mean?
 10:03:00 6 A. Yes.
 10:03:00 7 Q. Two people -- and suppose in this punishment phase
 10:03:02 8 you heard evidence that this person had served honorably in the
 10:03:06 9 military during his life. One person could say, You know,
 10:03:08 10 that's mitigating. He served his country. Another person could
 10:03:12 11 say, You know what, he could control his conduct. He knew right
 10:03:14 12 from wrong. I don't think that really is fair or mitigating.
 10:03:18 13 Do you see how an individual person could view that either way?
 10:03:22 14 A. Yes.
 10:03:22 15 Q. What you think is mitigating is up to you. Okay? So
 10:03:26 16 you ask yourself, do I believe it? If I do believe it, is it
 10:03:28 17 mitigating in my mind, because you don't have to agree with
 10:03:32 18 other jurors about that. What's mitigating is up to you, and if
 10:03:38 19 I think it's mitigating, do I think it's sufficiently
 10:03:40 20 mitigating, mitigating enough to warrant a life sentence, as
 10:03:44 21 opposed to death. Okay. Does that make sense to you?
 10:03:48 22 A. Yes.
 10:03:48 23 Q. Okay. Do you feel comfortable with that?
 10:03:50 24 A. Yes.
 10:03:50 25 Q. Okay. Anything else or did I -- okay. This cold is
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10:03:58 1 driving me nuts. I'm not working on all -- all four cylinders
 10:04:02 2 this morning or whatever.
 10:04:04 3 Okay. Now, let's talk a little bit about some
 10:04:06 4 other laws. Voluntary intoxication, if I voluntarily take drugs
 10:04:12 5 or alcohol, that is not a defense to my committing a crime. I
 10:04:14 6 can't say, King's X, I'm not responsible for it now. Okay? You
 10:04:18 7 may consider it as mitigating or aggravating circumstance in the
 10:04:22 8 punishment phase for whatever weight you think it has. Okay?
 10:04:26 9 A. Okay.
 10:04:26 10 Q. It's admissible, but it's not a defense to the
 10:04:30 11 commission of a crime. Does that make sense to you?
 10:04:34 12 A. It's not a defense? What is that?
 10:04:36 13 Q. If something was a defense, that would mean the
 10:04:38 14 person basically would be found not guilty if you prove that
 10:04:42 15 that factor was present.
 10:04:42 16 A. Oh, okay. Yes.
 10:04:44 17 Q. Do you see what I mean?
 10:04:44 18 A. Yes.
 10:04:46 19 Q. Okay. All right. Can you follow that law?
 10:04:46 20 A. Yes.
 10:04:48 21 Q. Okay. 3823 Code of Criminal Procedure says that if
 10:04:52 22 the police violate the law in how they obtain evidence and how
 10:04:56 23 they get evidence, that evidence cannot be used by a jury for
 10:05:02 24 any purpose. Okay. Have you ever seen that on the police shows
 10:05:06 25 you've seen on TV?
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10:05:08 1 A. Yes.
 10:05:08 2 Q. You're familiar with the concept?
 10:05:10 3 A. Uh-huh.
 10:05:12 4 Q. Okay. What happens is in your charge, the jury
 10:05:16 5 charge that you get, you may be asked a question, which
 10:05:18 6 basically says this: If you find that evidence was taken
 10:05:22 7 illegally, you may not consider it for any purpose. Okay?
 10:05:26 8 So you may have a piece of evidence come in. If
 10:05:28 9 you look at all of the facts surrounding that and you decide it
 10:05:32 10 was taken illegally, what you have to do as a juror is put that
 10:05:36 11 piece of evidence aside, put it aside and not consider it for
 10:05:40 12 any purpose and turn around and look at what you've got left.
 10:05:44 13 If you've got enough left to find the person guilty, then so be
 10:05:48 14 it, but if you don't, if basically the majority of the state's
 10:05:52 15 evidence was there, there is not enough, then you must find the
 10:05:56 16 person not guilty. Does that make sense to you?
 10:05:58 17 A. Yes.
 10:06:00 18 Q. Can you understand why we have such a rule?
 10:06:02 19 A. Yes.
 10:06:02 20 Q. People will not follow the law, unless the law has
 10:06:06 21 teeth. Do you see what I mean?
 10:06:08 22 A. Yes.
 10:06:08 23 Q. It's like kids. You have to make rules for your
 10:06:10 24 kids, right?
 10:06:10 25 A. Right.
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10:06:12 1 Q. If they don't have any teeth, your kids won't respect
 10:06:16 2 them. Does that make sense to you?
 10:06:16 3 A. Yes.
 10:06:16 4 Q. Okay. Well, do you think you could follow such a
 10:06:18 5 law?
 10:06:20 6 A. Yes.
 10:06:20 7 Q. Okay. Understanding it might be difficult to
 10:06:22 8 disregard something you know is there, but you feel like you
 10:06:24 9 could do that?
 10:06:26 10 A. Yes.
 10:06:26 11 Q. Okay. Well, now let me -- let me test to that a
 10:06:28 12 little bit. Okay?
 10:06:30 13 You understand that might place you emotionally
 10:06:32 14 in a very difficult situation. We might be talking about a full
 10:06:38 15 confession given by a child molester or someone who murdered a
 10:06:42 16 child, and if that piece of evidence is put aside, there might
 10:06:46 17 not be enough left to convict them, someone who killed a child.
 10:06:52 18 I liked it. I'll do it again. I've done it before, and you
 10:06:54 19 don't even know about it. Do you see what I mean?
 10:06:56 20 A. Yes.
 10:06:58 21 Q. It could be a very brutal situation personally. Do
 10:07:00 22 you feel like, despite that, you could follow the law as given
 10:07:04 23 to you by the judge?
 10:07:06 24 A. You'd have to.
 10:07:06 25 Q. You have to. I mean, you don't have an option, other
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10:07:10 1 than emotionally in, you know, having that evidence out there.
 10:07:16 2 A. Can I ask, would you -- would it be something that's
 10:07:20 3 brought in and then it's just dismissed, I mean -- I mean,
 10:07:26 4 during the trial?

10:07:28 5 Q. You're wondering how it happens?

10:07:30 6 A. Yeah. I'm curious why -- why is it brought in and
 10:07:32 7 then dismissed.

10:07:34 8 Q. Well, Texas is a little different than most states in
 10:07:38 9 that we provide for a jury making decisions about facts even on
 10:07:42 10 issues like that. Okay? Texas, generally, tends to give juries
 10:07:46 11 a great deal of leeway in making decisions. Okay? So what the
 10:07:50 12 procedure is is that evidence is presented to you, and you are
 10:07:52 13 given an opportunity to pass on the facts, if you see what I
 10:07:56 14 mean, to decide if the facts are there which indicate that that
 10:08:00 15 evidence was taken illegally. Okay? The law -- the judge is
 10:08:06 16 the judge of the law.

10:08:06 17 A. Right.

10:08:06 18 Q. They give you the law and the law tells you what you
 10:08:08 19 have to do if you find from the facts that that evidence was
 10:08:12 20 taken illegally. Okay. Does that make sense to you?

10:08:14 21 A. Yes. I didn't realize that was the jury's
 10:08:16 22 responsibility on that point.

10:08:18 23 Q. In many states it's not, but in this state, it is.
 10:08:22 24 Texas, generally, is very trusting and very dependent on jurors.
 10:08:22 25 Okay?

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10:08:26 1 A. Okay.

10:08:26 2 Q. Which is absolutely proper, you know. It's our
 10:08:26 3 community and -- and we ultimately decide how we live in it.
 10:08:30 4 Does that make sense to you?

10:08:32 5 A. Yes.

10:08:32 6 Q. Okay. So that's the way it would proceed. So the
 10:08:36 7 jury would receive the evidence, but then would be instructed,
 10:08:38 8 if you find from these facts that it was illegally taken, that
 10:08:42 9 you are not to consider it and you're to put it aside and
 10:08:46 10 consider what you have left. That would be exactly the process
 10:08:48 11 a judge would go through in considering a similar question.
 10:08:52 12 Does that make sense to you?

10:08:54 13 A. Yes.

10:08:54 14 Q. Okay. Did I explain that well enough?

10:08:56 15 A. Yes.

10:08:56 16 Q. Okay. Good deal. Do you think, as hard as it was,
 10:09:00 17 that you could follow that law?

10:09:00 18 A. Yes.

10:09:02 19 Q. Okay. Now, you might want to go home and get under
 10:09:04 20 the bed in a fetal position later, but you feel like you could
 10:09:06 21 follow that?

10:09:08 22 A. Yes.

10:09:08 23 Q. Okay. All right. Now, a couple of last legal issues
 10:09:12 24 and then -- then we'll be done.

10:09:14 25 It might be that in a criminal case you would be

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10:09:18 1 given some options with regard to what to convict a person of.
 10:09:22 2 Okay? For example, in a capital murder case, you might be given
 10:09:28 3 the option of the lesser offense of murder. Okay? Suppose you
 10:09:32 4 looked at a fact circumstance, and although you found that an
 10:09:38 5 intentional murder was committed, you weren't for sure about the
 10:09:40 6 aggravating element. You weren't so sure there was a robbery
 10:09:42 7 going on, or you weren't so sure the second person was killed
 10:09:46 8 intentionally. Okay? So you said, Okay, state, we'll go -- and
 10:09:48 9 understand something, in order to consider a lesser included
 10:09:54 10 offense, you must first agree that the person is not guilty of
 10:09:56 11 the greater offense. Only then do you proceed to consider the
 10:10:00 12 lesser included offense, okay, but you would then go to a lesser
 10:10:04 13 included offense and you might say, Hey, state, okay, we'll
 10:10:06 14 convict of regular murder, regular intentional murder. Okay?

10:10:10 15 A. Okay.

10:10:10 16 Q. The range of punishment there is from five years to
 10:10:12 17 99 years or life and a \$10,000 fine. Okay?

10:10:18 18 Now, the law says in order to be fair and
 10:10:22 19 impartial, in order to be a juror in a case, you must be able to
 10:10:24 20 consider the full punishment range, from a minimum of five to a
 10:10:28 21 maximum of life and anywhere in between and be able to wait for
 10:10:32 22 it? Okay. Like a car in neutral, wait for your facts, and then
 10:10:36 23 make your decision based on the facts you hear. Okay?

10:10:42 24 Does that make sense to you, where you wouldn't
 10:10:44 25 want to foreclose or refuse to consider any part of the
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10:10:46 1 punishment range before you knew what the evidence was?

10:10:48 2 A. Yes, it makes sense.

10:10:50 3 Q. Okay. Because some people might say, You know, it
 10:10:54 4 would be a very rare case in which I could consider the minimum
 10:10:56 5 of five in an intentional murder case. Another person might
 10:11:00 6 say, You know, life is a long time; it's a very rare case where
 10:11:06 7 I could consider the maximum in -- you know, in a case. And
 10:11:10 8 that's okay to have strong feelings about the law or about
 10:11:14 9 criminal justice, but what's not okay is to say, I don't care
 10:11:18 10 what the facts are. I'm going to cut out the minimum or the
 10:11:22 11 maximum just because I feel that way, regardless of what the
 10:11:26 12 evidence is. Okay?

10:11:28 13 A. Uh-huh.

10:11:28 14 Q. Do you feel like you could consider the full range of
 10:11:30 15 punishment from a minimum of five to the maximum of life?

10:11:34 16 A. Yes.

10:11:34 17 Q. And everything in between?

10:11:36 18 A. Yes.

10:11:36 19 Q. Okay. Now, a defendant has the right to an attorney.
 10:11:40 20 He has the right to a trial by jury. He has a right to remain
 10:11:46 21 silent, meaning that if he chooses to testify, you may consider
 10:11:48 22 his evidence just as you would any other witness to decide
 10:11:50 23 whether you think it's credible. Okay?

10:11:52 24 On the other hand, if he chooses not to testify,
 10:11:56 25 if he invokes or chooses not to testify, not to get up on the

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10:12:00 1 stand and talk, okay, you may not consider that for any purpose
 10:12:04 2 against him?
 10:12:06 3 A. Uh-huh.
 10:12:08 4 Q. Does that make sense to you?
 10:12:08 5 A. Yes.
 10:12:08 6 Q. Do you think you could follow that?
 10:12:10 7 A. Yes.
 10:12:12 8 Q. And as a law, that makes sense, right?
 10:12:14 9 A. Uh-huh, it does.
 10:12:14 10 Q. Okay. Because you have no idea why a person might or
 10:12:16 11 might not testify. It could be any one of a million things. So
 10:12:22 12 it makes sense not to make decisions based that you're guessing
 10:12:28 13 or you don't know?
 10:12:30 14 A. Okay.
 10:12:32 15 THE REPORTER: Pardon me? What did you say?
 10:12:32 16 Pardon me?
 10:12:30 17 MS. CALLAGHAN: Based on guessing or you don't
 10:12:30 18 know.
 10:12:30 19 Q. (By Ms. Callaghan) Does that make sense to you?
 10:12:30 20 A. Yes.
 10:12:32 21 Q. Okay. All right. Do you know anything about an
 10:12:36 22 offense that occurred, a murder that occurred out on the east
 10:12:38 23 side of Fort Worth on Scott Avenue in April of this year?
 10:12:42 24 A. No.
 10:12:44 25 Q. No news accounts, nothing on the TV that you recall
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10:12:46 1 seeing about it?
 10:12:48 2 A. No.
 10:12:48 3 Q. All right. Do you know any person named Crutsinger?
 10:12:52 4 A. No.
 10:13:10 5 Q. Okay. You said in talking about the death penalty,
 10:13:12 6 when it would be appropriate or not, you said if someone had
 10:13:16 7 murdered someone, sometimes there are circumstances that could
 10:13:20 8 have provoked the situation. What did you mean when you were
 10:13:24 9 saying that?
 10:13:28 10 A. Things get heated, people take it a little too far.
 10:13:32 11 I mean, things are accidental sometimes, you know, not meaning
 10:13:36 12 to do it.
 10:13:38 13 Q. Okay. But when you say, Provocation -- let me see if
 10:13:42 14 I understand correctly what you mean by that word. Do you mean
 10:13:46 15 that that person intentionally did it, that they were provoked
 10:13:50 16 to do it?
 10:13:54 17 A. It's almost like you could say someone brought it
 10:13:56 18 upon themselves sometimes by acting, you know --
 10:14:00 19 Q. By acting like a jerk?
 10:14:02 20 A. By acting a certain way and --
 10:14:04 21 Q. Yeah. Someone -- the victim, for example, might have
 10:14:08 22 acted like a jerk or been poorly behaved or caused other people
 10:14:12 23 to act the way they did to some degree?
 10:14:14 24 A. Right.
 10:14:16 25 Q. Does that necessarily mean the murder is justified
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10:14:18 1 legally to you?
 10:14:18 2 A. No, not -- not legally justified, no. I understand
 10:14:22 3 that that happens, though, and --
 10:14:26 4 Q. And that's an element you might consider in the
 10:14:28 5 punishment?
 10:14:28 6 A. Right.
 10:14:28 7 Q. Okay. All right. You said you felt that eyewitness
 10:14:54 8 accounts were somewhat reliable. Can you tell me what you meant
 10:15:00 9 by that?
 10:15:00 10 A. People change stories. People, you know, years later
 10:15:04 11 may not remember the same things they remember right after the
 10:15:10 12 occurrence. Things that can change.
 10:15:10 13 Q. Okay. So you feel like in some cases, eyewitness
 10:15:14 14 might be just fine. From a different person or a different fact
 10:15:16 15 situation, it would be a problem?
 10:15:18 16 A. Could you repeat that?
 10:15:20 17 Q. Okay. Sorry. I'm getting complicated here.
 10:15:22 18 You think that one eyewitness in a case, in a
 10:15:26 19 particular case, this eyewitness over here might be just fine,
 10:15:30 20 they remember it clearly, it was --
 10:15:30 21 A. Right.
 10:15:34 22 Q. -- relatively -- over here, because of time or
 10:15:34 23 because of this individual person, it may be a problem; it just
 10:15:38 24 depends on the person?
 10:15:38 25 A. If the story changes or if they, you know, forget or
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10:15:42 1 if they've backed out on what they saw.
 10:15:46 2 Q. Okay. So things can affect eyewitness testimony. It
 10:15:50 3 may be reliable sometimes or it may not.
 10:15:50 4 A. Right.
 10:15:52 5 Q. It just depends?
 10:15:54 6 A. Yes.
 10:15:54 7 Q. Okay. All right. Fair enough. You are a Baptist?
 10:15:56 8 A. Yes.
 10:15:56 9 Q. Do you know if your church has any particular views
 10:16:00 10 on the death penalty?
 10:16:00 11 A. No. I don't go regularly.
 10:16:00 12 Q. Okay.
 10:16:04 13 A. I should, but I don't.
 10:16:06 14 Q. Well, I hear you.
 10:16:08 15 Is there anything about that that would affect
 10:16:10 16 you in being a juror, do you think?
 10:16:12 17 A. No.
 10:16:12 18 Q. Okay. Some people have very strong religious
 10:16:14 19 feelings that can influence that.
 10:16:16 20 A. I understand.
 10:16:26 21 Q. You indicated that your spouse perhaps had been
 10:16:28 22 arrested for an expired driver's license.
 10:16:32 23 A. Yes.
 10:16:32 24 Q. Okay. Do you think he was treated fairly?
 10:16:38 25 A. No.
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10:16:38 1 Q. Okay. Why not or how come?
 10:16:42 2 A. Well, you know, you could give him a citation and let
 10:16:44 3 them go get their driver's license renewed.
 10:16:48 4 Q. Okay. Do you feel like that would affect you in
 10:16:50 5 listening to the testimony of a police officer?
 10:16:54 6 A. I -- would it affect me in listening to the police
 10:16:58 7 officer? Is that what you -- what were you --
 10:17:00 8 Q. Yeah. If a police officer were to testify during the
 10:17:02 9 course of a capital case, would it affect you in listening to
 10:17:08 10 that police officer? Has that experience given you a distrust
 10:17:10 11 of police officers?
 10:17:10 12 A. Oh, no, no.
 10:17:14 13 Q. Okay. Do you basically feel like that related to
 10:17:16 14 that one officer?
 10:17:16 15 A. Probably so. I didn't know him at the time, but he's
 10:17:20 16 a good person, so --
 10:17:20 17 Q. Oh, do you know the officer now?
 10:17:22 18 A. No, my husband. I didn't know my husband at the time
 10:17:26 19 of the -- when that happened, so --
 10:17:28 20 Q. Okay. All right. I would venture to guess he's far
 10:17:34 21 more careful about his driver's license?
 10:17:36 22 A. Oh, yeah.
 10:17:36 23 Q. Okay. All right. You talk here about police
 10:17:38 24 officers. You said, More likely to tell the truth than most
 10:17:42 25 witnesses.

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10:17:44 1 A. Yes.
 10:17:44 2 Q. Okay. Now, do you know any police officers
 10:17:46 3 personally?
 10:17:48 4 A. Years back, yes, you know.
 10:17:50 5 Q. You did?
 10:17:52 6 A. (Venireperson nods.)
 10:17:52 7 Q. Would you agree with me that police officers, before
 10:17:56 8 they become police officers, are just regular human beings?
 10:18:00 9 A. Yes.
 10:18:00 10 Q. Put their pants on one leg at a time, nothing
 10:18:04 11 different about them?
 10:18:04 12 A. Yes.
 10:18:04 13 Q. Okay. And that when they put on those uniforms, when
 10:18:08 14 they become police officers, they are still the same person they
 10:18:10 15 were underneath that?
 10:18:12 16 A. Yes.
 10:18:12 17 Q. They don't necessarily change as human beings just
 10:18:16 18 because they have a uniform on?
 10:18:18 19 A. Right.
 10:18:18 20 Q. Okay. Do you think you could consider -- now, let me
 10:18:22 21 tell you this before I ask you that question. Is it proper in
 10:18:24 22 considering the testimony of any witness to consider their
 10:18:28 23 training or education? That would be logical, right?
 10:18:32 24 A. Yes.
 10:18:32 25 Q. Do you feel like you could consider the testimony of

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10:18:36 1 a police officer from a credibility standpoint, though, in terms
 10:18:40 2 of whether you believe the person is telling the truth or is
 10:18:42 3 accurate? Do you think you could consider their testimony just
 10:18:46 4 the same as any other witness and base it on what they're saying
 10:18:50 5 to you?
 10:18:50 6 A. Yes.
 10:18:50 7 Q. You don't feel like you'd necessarily believe a
 10:18:54 8 police officer just because they were a police officer?
 10:18:56 9 A. No.
 10:18:58 10 Q. Okay. All right. Does that make sense to you?
 10:19:00 11 A. Yes.
 10:19:00 12 Q. Okay. Now, there is a question here, if the state
 10:19:04 13 charges someone with murder, that person is probably guilty.
 10:19:08 14 You understand the presumption of innocence, right? We've gone
 10:19:12 15 over that this morning.
 10:19:14 16 A. Yes.
 10:19:14 17 Q. What did you mean when you said you agreed with that,
 10:19:18 18 because it says, If the state charges someone with murder, that
 10:19:22 19 person is probable guilty?
 10:19:24 20 A. Well, if you listen to the evidence and the jury has
 10:19:26 21 decided that they are guilty.
 10:19:28 22 Q. Okay. So you were really kind of thinking ahead --
 10:19:32 23 A. Yes.
 10:19:32 24 Q. -- to that ultimate situation?
 10:19:34 25 A. Right.

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10:19:34 1 Q. Do you realize that just because we return an
 10:19:36 2 indictment against someone, that indictment is not evidence?
 10:19:38 3 A. Right. I mean, after today, yes, I understand more
 10:19:42 4 of what this is all about.
 10:19:44 5 Q. Okay. All right. Okay. If the evidence is such
 10:19:52 6 that you cannot decide if a defendant is not guilty or guilty,
 10:19:54 7 you should find the defendant not guilty. Once again, that goes
 10:20:00 8 back to the burden of proof. The defendant is presumed
 10:20:02 9 innocent, unless and until we can get above that level. If the
 10:20:06 10 state doesn't get to that level, we don't make it up there, then
 10:20:10 11 the default is always not guilty. Do you understand?
 10:20:14 12 A. Yes.
 10:20:14 13 Q. So if you can't decide whether a person is guilty or
 10:20:18 14 not guilty, what do you do?
 10:20:18 15 A. Not guilty.
 10:20:20 16 Q. Right. Okay. Does that make sense to you?
 10:20:22 17 A. Yes.
 10:20:22 18 Q. Okay. Do you feel like you could follow that?
 10:20:26 19 A. Yes.
 10:20:28 20 Q. Okay. All right. You can definitely tell a mother
 10:20:40 21 when they say how often do you -- or how many hours a day do you
 10:20:44 22 watch television and you say, 15 minutes. Believe me, I
 10:20:50 23 understand that. I've been there, done that, got the T-shirt.
 10:20:54 24 A. At night, yeah.
 10:21:18 25 Q. Can you interpret something for us? What word is

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10:21:22 1 this?

10:21:26 2 A. Leader.

10:21:26 3 Q. Leader. Okay. Okay.

10:21:28 4 A. Sorry.

10:21:30 5 Q. It looked like teacher to us.

10:21:32 6 A. No, leader.

10:21:34 7 Q. Okay. All right. Now, before we finish up, is there

10:21:40 8 anything else you would like to ask me or think I ought to know?

10:21:44 9 A. No.

10:21:44 10 Q. Do you feel like everything is pretty clear?

10:21:48 11 A. Yes, ma'am.

10:21:48 12 MS. CALLAGHAN: Okay. Well, then, Ms. Greene,

10:21:50 13 I'd really like to thank you for answering all of my impertinent

10:21:54 14 questions. I appreciate it.

10:21:56 15 And at this time, the state would pass the

10:21:58 16 witness.

10:21:58 17 THE COURT: Okay. Thank you. We're going to

10:22:00 18 take a five-minute recess. Ms. Greene, if you would go out in

10:22:02 19 the hallway, there is restroom facilities, water out there, but

10:22:06 20 we'll be in recess for five minutes.

10:22:06 21 MS. GREENE: Okay.

10:22:06 22 (Recess taken.)

10:22:06 23 (Venireperson Greene enters the proceedings.)

10:22:06 24 THE COURT: Okay. Ms. Greene, the defense is

10:22:06 25 now going to have an opportunity to talk to you.

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10:39:52 1 Q. Why -- why do you feel that way?

10:39:54 2 A. Well, if you need me, it's fine. Death penalty is a

10:40:00 3 hard thing to have to think about, but, you know, I'm fine with

10:40:04 4 being on the jury.

10:40:06 5 Q. What you do you think about giving somebody the death

10:40:10 6 penalty?

10:40:10 7 A. It's appropriate in some circumstances.

10:40:12 8 Q. I understand it's appropriate, but what I'm getting

10:40:16 9 at is not -- not so much whether or not you think somebody might

10:40:20 10 deserve it. What do you think about you being on a jury that

10:40:24 11 answers those questions the way you have to answer them in such

10:40:30 12 a way, and I'm not talking about whether the proof or -- I'm

10:40:38 13 just saying, what do you think about when you think about being

10:40:42 14 in a position to make a decision based on some facts that

10:40:46 15 results in somebody else sitting in the courtroom with you

10:40:52 16 dying? What do you -- how do you feel about that?

10:41:06 17 A. I -- I've not had to think that way before, so I --

10:41:14 18 Q. I'll give you some time to think about it if you --

10:41:18 19 A. I agree with the death penalty.

10:41:20 20 Q. I understand that.

10:41:22 21 A. But I don't know -- I've never been in that

10:41:24 22 situation, so I don't know how I would feel.

10:41:28 23 Q. You're kind of starting up your jury service at the

10:41:32 24 top of the ladder, as opposed to shoplifting or check forgery.

10:41:32 25 A. Right.

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10:38:18 1 VOIR DIRE EXAMINATION

10:38:22 2 BY MR. RAY:

10:38:22 3 Q. How are you doing, Ms. Greene?

10:38:24 4 A. Good.

10:38:26 5 Q. Could you pull the microphone up a little closer?

10:38:30 6 A. Is that better?

10:38:30 7 Q. Yeah, that's fine.

10:38:32 8 I don't have as many questions for you as

10:38:36 9 Ms. Callaghan did. She's pretty thorough. I've got a few.

10:38:40 10 Okay?

10:38:40 11 A. Okay.

10:38:44 12 Q. The -- the impression that I get from just watching,

10:38:50 13 listening to you is that you -- you're ready, willing and able,

10:39:02 14 I guess, to be on this jury, is that right?

10:39:06 15 A. I have never served on a jury, so I don't know what

10:39:08 16 it would be.

10:39:12 17 Q. Well, do you want to serve on this jury?

10:39:14 18 A. If you needed me to, I would.

10:39:16 19 Q. I understand that, but you're kind of drafted, I

10:39:20 20 guess, but what I'm getting at is, if you had your druthers,

10:39:28 21 like Ms. Callaghan asked you if you could be the governor for

10:39:32 22 today, I'm asking you if you could be the jury selection person

10:39:36 23 for today, would you -- would you put yourself here or take

10:39:40 24 yourself out?

10:39:42 25 A. I -- either way is fine with me, to be honest.

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10:41:40 1 Q. Would you rather be on one of those kind of cases

10:41:42 2 than what we're trying here, or would you like to be on a death

10:41:42 3 penalty case?

10:41:44 4 A. I've always be intrigued with law and I used -- I

10:41:48 5 worked for the county attorney's office when I was in high

10:41:50 6 school and I enjoyed it and it's interesting to me, so --

10:41:54 7 Q. What county attorney's office did you work with?

10:41:58 8 A. In Denison. It was at the sub courthouse, and I've

10:42:02 9 just enjoyed it. I've always enjoyed that kind of stuff. It's

10:42:06 10 not something that I would personally like to be -- give someone

10:42:08 11 the death sentence or anything like that.

10:42:12 12 Q. Four or five years from now, if you are on this jury,

10:42:20 13 and Billy Jack over here has been found guilty and he's laying

10:42:24 14 down there on the table in Huntsville and they come on

10:42:26 15 television with an announcement that he's going to be executed

10:42:30 16 next Tuesday.

10:42:30 17 A. Right.

10:42:32 18 Q. How do you feel about that?

10:42:36 19 A. It would be hard.

10:42:38 20 Q. What do you mean by that?

10:42:42 21 A. It -- it would not give me a good feeling, but if we

10:42:46 22 made a decision and you have to -- you have to understand that

10:42:50 23 we made it because of certain circumstances or a decision of a

10:42:56 24 jury.

10:42:56 25 Q. What -- you said -- it was your husband before you

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10:43:04 1 got married that got a -- what kind of -- he went to jail for
 10:43:08 2 not having his driver's license?
 10:43:10 3 A. Right, his driver's license was expired.
 10:43:12 4 Q. And you didn't know him then, right?
 10:43:12 5 A. (Venireperson nods.)
 10:43:16 6 Q. They took him to jail and made him post a bond or
 10:43:18 7 made him pay his fine or whatever it was and what did you get
 10:43:24 8 out of all that?
 10:43:28 9 A. I just felt like they could have given him another
 10:43:32 10 option. His parents were with him, and he's an adult. They
 10:43:36 11 could have drove.
 10:43:38 12 Q. Maybe they could have wrote him a ticket, and let his
 10:43:40 13 mother drive a car and saved a lot less hassle?
 10:43:44 14 A. Right.
 10:43:46 15 Q. One of your answers you gave was that the -- if the
 10:43:54 16 police -- excuse me -- if the state charges someone with murder,
 10:44:00 17 that person is probable guilty. Do you remember that question?
 10:44:06 18 We had a bunch of -- we had a bunch of questions
 10:44:10 19 that we gave you, and towards the back there was some -- the
 10:44:16 20 question was: Please tell us your reaction to each of the
 10:44:18 21 following statements. And we gave you six statements, and we
 10:44:22 22 asked you to agree or not agree or no opinion, disagree
 10:44:26 23 strongly. It was kind of a check the box. Do you remember
 10:44:28 24 doing that?
 10:44:30 25 A. Vaguely.

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10:44:32 1 Q. Okay. Look over here on the screen. If the state
 10:44:42 2 charges someone with murder, that person is probably guilty.
 10:44:48 3 Look what you checked.
 10:44:54 4 A. Yes.
 10:44:56 5 Q. What were you thinking about that?
 10:44:58 6 A. That they had already been found guilty.
 10:45:02 7 Q. Okay.
 10:45:04 8 A. Their -- you know, if it had gone through a jury,
 10:45:06 9 this is what -- you know, understanding how it works now, that's
 10:45:12 10 a different situation.
 10:45:14 11 Q. Okay. Well, what that -- what that sentence means is
 10:45:18 12 that if the state charges someone with murder, what that
 10:45:22 13 insinuates is that if the police pick you up for a crime, it
 10:45:28 14 doesn't matter what kind of crime it is and they haul you off to
 10:45:32 15 jail and then the district attorney's office -- if it's a crime
 10:45:36 16 that the district attorney's office gets involved with -- which
 10:45:38 17 is all felonies and Class A and B misdemeanors, everything but
 10:45:44 18 traffic tickets pretty much, that's the state. That's who that
 10:45:48 19 is, these two ladies sitting over here.

10:45:50 20 If they charge someone, and what we have is
 10:45:52 21 murder. Okay? That's what that sentence means. They decided
 10:45:56 22 to file charges against someone, based almost always on the
 10:46:02 23 police having conducted some sort of investigation, which could
 10:46:08 24 be anything from a policeman seeing a crime with his own eyes
 10:46:12 25 and arresting him, to getting an arrest warrant for whatever

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10:46:14 1 that person might have done, but in either event, the state
 10:46:18 2 files charges, that person is probable guilty. Now, that -- and
 10:46:24 3 you understand that definition, what I mean in that question,
 10:46:28 4 what that question means?
 10:46:30 5 A. Yes.
 10:46:32 6 Q. How would you answer that now, now that we're all on
 10:46:34 7 the same sheet? You can answer the same way, if you want, or
 10:46:38 8 you can answer it with one of the others.
 10:46:40 9 A. I don't know.
 10:46:42 10 Q. Okay. What do you think about when you read that?
 10:46:48 11 What does that tell you? What do you -- I'm trying to find out
 10:46:52 12 what you were thinking. I don't want to tell you --
 10:46:54 13 A. Probability that there is something there that has --
 10:46:58 14 you know, that he has acted or he has --
 10:47:02 15 Q. Well, the sentence says that person is probably
 10:47:04 16 guilty at the other end of it, the back end of it.
 10:47:08 17 A. Right.
 10:47:08 18 Q. Do you agree with that, or do you not agree with
 10:47:12 19 it?
 10:47:12 20 A. I don't know.
 10:47:12 21 Q. You don't know. Let's look here at something else.
 10:47:38 22 Even though the law says the defendant has the right to remain
 10:47:44 23 silent, an innocent person accused of murder would testify if he
 10:47:48 24 was innocent. Okay? Do you remember that sentence? That was
 10:47:52 25 just on the next page.

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10:47:54 1 A. I see it.
 10:47:56 2 Q. Okay. All right. You put, Don't know. What did you
 10:47:58 3 think that sentence meant when you were looking at it?
 10:48:06 4 A. That he would testify in his own defense, but he
 10:48:08 5 doesn't have to.
 10:48:10 6 Q. He doesn't have to. Everybody agrees with that. You
 10:48:14 7 don't have to testify if you don't want to, right?
 10:48:16 8 A. Right.
 10:48:16 9 Q. But if you had an innocent person, that sentence says
 10:48:22 10 he would testify if he was innocent. An innocent person accused
 10:48:28 11 of murder would testify if he was innocent. In other words, by
 10:48:32 12 God, if I didn't do this, I'd get up there and testify. That's
 10:48:36 13 what that sentence says. Okay? Do you understand what's
 10:48:44 14 printed there? Does that change your answer at all?
 10:48:48 15 A. (Venireperson shakes head.)
 10:48:48 16 Q. You'd still answer it don't know?
 10:48:50 17 A. Well, I stated you don't have to either way.
 10:48:52 18 Q. Sure. You cannot testify if you're guilty.
 10:48:56 19 A. Right.
 10:48:56 20 Q. You cannot testify if you're innocent, and so your
 10:49:02 21 answer is the same?

10:49:08 22 A. He doesn't have to. No opinion. I don't know, I
 10:49:12 23 guess.

10:49:18 24 Q. Let's look at the next one. If you got some
 10:49:26 25 evidence, but you can't decide if the defendant is not guilty or

10:49:30 1 guilty, you should find the defendant not guilty. In other
 10:49:30 2 words --
 10:49:40 3 A. I'm sorry.
 10:49:42 4 Q. What's funny?
 10:49:44 5 A. I'm learning more today than what I obviously knew
 10:49:48 6 the other day.
 10:49:52 7 Q. When you get it up there on the screen, it brings
 10:49:54 8 back a good memory, doesn't it?
 10:49:56 9 What were you thinking when you wrote that down?
 10:50:14 10 A. I guess, I was looking at maybe just the evidence --
 10:50:18 11 Q. Okay.
 10:50:20 12 A. -- in that.
 10:50:22 13 Q. Let me tell you this: You've served your civic duty
 10:50:28 14 when you came up here and answered Ms. Callaghan's questions and
 10:50:32 15 listened to Judge Richards and you're answering mine. Okay?
 10:50:36 16 When this is over with, you're going to go
 10:50:40 17 out -- when I get through talking to you, you're going to go out
 10:50:42 18 in the hall for about two minutes, and I'm not going to tell you
 10:50:46 19 how the process works, but you're going to get called back into
 10:50:50 20 the courtroom and Judge Richards is either going to tell you
 10:50:52 21 you're going to be on the jury or you're not and the prosecutors
 10:50:54 22 and myself and the judge -- and, actually, Judge Richards won't
 10:50:58 23 get involved in it. The prosecutors and Mr. Moore and myself,
 10:51:00 24 we will decide among yourselves through a little short process
 10:51:04 25 that doesn't take very long whether or not you're going to be on
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10:51:08 1 the jury.
 10:51:08 2 A. Okay.
 10:51:08 3 Q. And Judge Richards is going to tell you, and there is
 10:51:12 4 no right or wrong answer. Okay? This questionnaire, which I
 10:51:20 5 don't take credit for all of it, but I take credit for some of
 10:51:24 6 it, my share, I guess, 84 questions that we asked you, and some
 10:51:28 7 of them had five parts to them, so well over 100 things we asked
 10:51:32 8 you. I could -- I could you tell you what the law is in a
 10:51:38 9 particular case and you could repeat it back to me, but that's
 10:51:40 10 not what I'm trying to do. Okay? I'm not trying to educate you
 10:51:48 11 on what the law is or isn't, other than just to point out some
 10:51:54 12 things to you, like what Ms. Callaghan did. She didn't expect
 10:51:58 13 you, when you walked in here, to know the there were two
 10:52:00 14 questions on this death penalty statute. So she's got to tell
 10:52:04 15 to some extent what the law is.
 10:52:06 16 But what I'm trying to find out is, based on
 10:52:08 17 this questionnaire, okay, and based on your answers here, I want
 10:52:12 18 to know how you feel about things, because this jury process
 10:52:16 19 is -- it's a situation where we want to know what your personal
 10:52:20 20 opinions are about a variety of things. Okay? We're having to
 10:52:30 21 make a decision that we have to make on several people, but
 10:52:34 22 ultimately on 12, okay, if you're going to be on the jury, based
 10:52:42 23 on the way we feel that you might characterize the evidence
 10:52:46 24 that -- we know what the evidence is going to be. I can't tell
 10:52:50 25 you what it's going to be, and the district attorney knows what
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10:52:54 1 the evidence is going to be. The way we characterize that
 10:53:00 2 evidence and how you feel about certain things, we kind of plug
 10:53:04 3 you into that. Does that make sense?
 10:53:06 4 A. Yes.
 10:53:06 5 Q. And the reason I say there is no right or wrong
 10:53:08 6 answers is many times we'll ask you a question, and we're just
 10:53:14 7 searching for your answer, not that you give us the right or
 10:53:18 8 wrong answer. Okay?
 10:53:20 9 A. Uh-huh.
 10:53:20 10 Q. And we can take -- if we were doing it the other way,
 10:53:26 11 then we'd bring you in and we'd say, How are you going to vote
 10:53:28 12 if you hear this, this, this and this, okay, and then it would
 10:53:32 13 be pretty simple. Okay? They would either like you or they
 10:53:36 14 wouldn't and we would or we wouldn't. It would be the opposite
 10:53:40 15 way every time. So that's not the way we do it.
 10:53:44 16 So if I ask you something and it looks like I'm
 10:53:44 17 asking you for a particular answer, don't read that into it.
 10:53:48 18 I'm not trying to trick you. It's just that I'm not necessarily
 10:53:52 19 looking for what you might think is the correct answer. I'm
 10:53:56 20 looking for how you feel. Okay?
 10:53:58 21 And when I saw these answers that you put on
 10:54:00 22 here, I think you told me that you didn't really understand --
 10:54:04 23 or you had a little different version of what the statement was
 10:54:10 24 that's part of what this process is about, because if I could
 10:54:12 25 change this questionnaire, there is probably 20 changes I'd make
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10:54:18 1 to it, because I've seen over and over several people have read
 10:54:22 2 a particular question a different way than it was intended when
 10:54:24 3 it was written. Does that make sense?
 10:54:26 4 A. Yes.
 10:54:26 5 Q. So I'm going to change it before I do this again, but
 10:54:30 6 I can't change those questions, but when I saw that question
 10:54:34 7 about if the state charges someone with murder, that person is
 10:54:38 8 probably guilty, and I see you say, I agree strongly with that,
 10:54:44 9 okay, what that tells me -- that question is in there to talk a
 10:54:52 10 little bit about the burden of proof. Okay?
 10:55:00 11 Just because you answered agree strongly doesn't
 10:55:02 12 mean you can't agree with the burden of proof. That's not what
 10:55:04 13 I'm getting at. If I did that, I'd say, Do you agree the burden
 10:55:10 14 of proof is beyond a reasonable doubt, yes or no. And if you
 10:55:12 15 put yes, you're fine; and if you put no, you're -- you hadn't
 10:55:16 16 answered it that way. That's not what I'm asking.
 10:55:18 17 And I've kind of lead up to that, but what I'm
 10:55:20 18 getting at is, on this question that's up there, okay, that I've
 10:55:28 19 got up there, if you can't decide if a guy is guilty or not
 10:55:32 20 guilty, you should find the person not guilty. And what you put
 10:55:38 21 was disagree with that. And I'm just curious as to what your
 10:55:42 22 thoughts are when you said that.
 10:55:44 23 I think after Ms. Callaghan talked to you about
 10:55:46 24 it a minute, you kind of realized that maybe you didn't read
 10:55:54 25 that question the way it was intended like the other question
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10:55:58 1 about if you find him guilty, but I'm trying to figure out what
10:56:06 2 you were thinking when you did it, because that might help me.

10:56:14 3 A. Maybe I based it on murder and maybe I based it on
10:56:18 4 evidence and from that, I said, you know, maybe the evidence
10:56:28 5 wasn't there, but maybe there were many some kind of other
10:56:30 6 circumstances in there. I don't know.

10:56:32 7 Q. Well, let me ask you this: Let's suppose that -- and
10:56:36 8 just like Ms. Callaghan, these are not the facts of this case.

10:56:40 9 A. I understand.

10:56:40 10 Q. And I'm going to make them way different. Let's
10:56:44 11 suppose that -- that you were kind of looking out your back yard
10:56:54 12 out there -- don't you live in Saginaw?

10:56:56 13 A. Uh-huh.

10:56:58 14 Q. You were looking out in your back yard and you see
10:57:00 15 somebody take his rifle out and shoot some little child, a
10:57:04 16 four-year-old child, you see it with your own eyes and you kind
10:57:12 17 of just put that in the back of your brain and it hurt you so
10:57:16 18 much that you don't even want to think about and you just kind
10:57:18 19 of black it out. You don't even tell the police. Okay? But
10:57:22 20 you know that happened, because you saw it. It's one of those
10:57:26 21 deals that it's been proven to you at 100 percent or 110
10:57:30 22 percent. Okay? Something happens and you go a year or so
10:57:36 23 later, you go to the mailbox and you get this jury summons and
10:57:40 24 you don't think about anything about that little kid getting
10:57:44 25 shot, and you come down here for jury service, just like what
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10:57:48 1 we're doing here, start talking about it and presumption of
10:57:50 2 innocence, burden of proof and all those things and you still
10:57:56 3 don't -- it still doesn't dawn on you that we're even talking
10:58:00 4 about the same case. Okay? Then they start trying the case,
10:58:04 5 start bringing the witness in, and you're on the jury. Okay?
10:58:06 6 You hadn't intentionally withheld anything. You just forgot,
10:58:10 7 okay, and let's suppose that the -- that the first policeman
10:58:16 8 comes in and says, You know what, I was out there in Saginaw.
10:58:20 9 I'm a Saginaw police officer and I saw something that looked
10:58:24 10 kind of funny one day and I looked over there and I saw
10:58:26 11 so-and-so shoot so-and-so's child and then it dawns on you, man,
10:58:32 12 he's talking about the same case I know about and I know he's
10:58:34 13 telling the truth, because it just happened. That's the way I
10:58:38 14 saw it. Okay?

10:58:42 15 A. Uh-huh.

10:58:42 16 Q. So you're convinced at that point. Okay? Maybe you
10:58:44 17 shouldn't -- and I don't want to go through the ethics of
10:58:48 18 whether or not you should have been on the jury or not, because
10:58:52 19 that's not what my question relates to. My point is: You know
10:58:52 20 that the crime has been committed, okay, and then let's just
10:58:56 21 suppose that -- that you later find out that, well, for whatever
10:59:04 22 reason -- and I'm not going to go into what the facts might be
10:59:08 23 to support this -- but let's suppose that the facts show that
10:59:12 24 there was an issue over whether or not there was a legal arrest,
10:59:18 25 whether or not the arrest of the person on trial was legal and
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10:59:22 1 after you heard all of the facts, you felt like in your heart
10:59:28 2 that arrest was not legal. Okay? Do you kind of see where I'm
10:59:36 3 going with this?

10:59:36 4 A. Yes.

10:59:38 5 Q. You knew absolute -- any doubt at all that this
10:59:42 6 person killed this little child. Maybe this child played with
10:59:46 7 your child, but you just knew that this person did it and you
10:59:52 8 also knew that the police, man, they just wrecked this train,
10:59:58 9 derailed it and it wasn't right and they had illegally arrested
11:00:02 10 this person and that whole conversation that the policeman had
11:00:06 11 told you about came after the fact. Okay? And if that's the
11:00:10 12 situation, the judge will tell you, you can't, under those
11:00:14 13 facts, use that testimony, if you found it was an illegal arrest
11:00:18 14 and you found it was an illegal arrest, so ultimately you can't
11:00:22 15 use what the policeman said. Okay?

11:00:26 16 So we get in the framework of this question I've
11:00:30 17 got up here. Do you see what I mean? And the evidence -- the
11:00:40 18 evidence in that question, the way it relates to this case, you
11:00:46 19 can only consider the evidence in the case that you hear in the
11:00:48 20 courtroom. Okay? So what you saw out there in Saginaw two
11:00:52 21 years ago, you can't use. Okay? The judge will tell you that
11:00:56 22 you've got to hear it coming from the witness stand, which is
11:01:00 23 where you're seated today. My screen is over there in the jury
11:01:04 24 box, but the only evidence that you hear from the witness stand,
11:01:08 25 whether it's from a -- from a witness or maybe a photograph or a
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11:01:14 1 statement that's introduced, there is a variety of types of
11:01:18 2 evidence that is admitted here in the courtroom, maybe some
11:01:20 3 opinion from an expert witness, maybe, but any of it, you don't
11:01:26 4 hear, you've got nothing and you can't decide if this guy is
11:01:34 5 guilty or not guilty and the reason you can't decide is because
11:01:38 6 they didn't present anything and you know they don't have a
11:01:42 7 and yet, in your heart of hearts, you know this guy is guilty.
11:01:50 8 How do you vote?

11:01:56 9 MS. HARTMAN: Well, I'm going to object to
11:01:58 10 binding. He's binding her to a specific set of facts and not to
11:02:02 11 whether she could follow the law if she was given the
11:02:04 12 appropriate instruction.

11:02:06 13 THE COURT: Overruled.

11:02:08 14 Q. (By Mr. Ray) How do you find? Also, no right or
11:02:14 15 wrong answer. I'm just --

11:02:18 16 A. I mean, if I'm following the law, I would vote not
11:02:24 17 guilty.

11:02:24 18 Q. All right. My question is, though, if you're not
11:02:26 19 following the law, are you going to vote guilty?

11:02:28 20 A. And in the back of my mind, if you saw it, you should
11:02:32 21 have done something about it. I can't -- I'm -- I'm having a
11:02:36 22 hard time with -- I understand what you're asking me, and I
11:02:42 23 believe everybody -- everybody should abide by the law.

11:02:42 24 Q. Well, it's like --

11:02:46 25 A. People don't, but I believe that, you know --

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11:02:50 1 Q. In this question that Ms. Callaghan asked you, her
 11:02:54 2 example was different, but her question has got the same logic.
 11:03:00 3 A. Yes.
 11:03:00 4 Q. You know he did it and --
 11:03:02 5 A. It would be hard. That would be very hard.
 11:03:06 6 Q. Do you see it's a little different, though, just
 11:03:08 7 asking you if you can follow the law versus how you --
 11:03:12 8 A. Yes, I do. It would be very, very hard to -- to not
 11:03:16 9 consider, I guess, the other side. I mean --
 11:03:20 10 Q. What my example entails and what hers entails is
 11:03:24 11 you've got -- maybe you didn't see -- maybe you just know.
 11:03:28 12 Maybe you saw a confession that made the admission like her
 11:03:32 13 example was, but the confession is no good for whatever reason.
 11:03:36 14 Okay? Maybe it's something real technical, like somebody didn't
 11:03:40 15 say you've got a right to have a lawyer present. Okay?
 11:03:44 16 A. Right.
 11:03:44 17 Q. But it's, you know, the kind of catch the phrase,
 11:03:48 18 it's kind of like being pregnant, it's either good or it isn't.
 11:03:52 19 You're not little bit pregnant. Okay? In some cases, it's not
 11:03:54 20 a little bit right. Sometimes it's just clear-cut, dead solid
 11:04:00 21 perfect one way or the other.
 11:04:02 22 And our purpose is here and the purpose of my
 11:04:04 23 question is, are you going to be able to do that, if it -- if it
 11:04:08 24 comes down to it? Are you going to be able to vote not guilty
 11:04:14 25 if the evidence in the case, in the legal evidence that you
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11:04:20 1 you've seen and that you have determined that you could use,
 11:04:22 2 because as Ms. Callaghan just very eloquently and very correctly
 11:04:28 3 said, in Texas, sometimes you get that option. Okay? And that
 11:04:32 4 may happen in this case, and it may not. I'm not trying to tell
 11:04:36 5 you it is or isn't, but if -- if you were put in a situation
 11:04:40 6 where you found the evidence was not usable, okay, are you going
 11:04:44 7 to be able to really disregard that?
 11:04:56 8 A. I'm supposed to. I -- you know, you want to.
 11:05:00 9 Q. Sure.
 11:05:02 10 A. You want to, but as a group of jurors, maybe it would
 11:05:06 11 help with all of us together being able to talk about it and
 11:05:12 12 understand.
 11:05:14 13 Q. Well, but if you -- if in my example, you come back
 11:05:16 14 to the same conclusion every time, whatever the evidence is, I'm
 11:05:20 15 not trying to tell you that this fact changes or this fact
 11:05:22 16 changes. For the purpose of my question, whatever you've got --
 11:05:28 17 whatever you've heard shows you that there is a piece of
 11:05:30 18 evidence that you can't use. Okay?
 11:05:34 19 A. Right.
 11:05:34 20 Q. And that is the only piece of evidence that points to
 11:05:38 21 the guilt of the defendant.
 11:05:38 22 A. Uh-huh.
 11:05:38 23 Q. But you've seen it? Okay. And the example of I
 11:05:42 24 confess to it. I did it. I'd do it 100 times again, if I got
 11:05:48 25 the opportunity. If you let me out, I'm going to do it five
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11:05:50 1 more times than you know about, and I've done it 10 times you
 11:05:54 2 don't even know about, pretty bad facts, okay, but whatever the
 11:05:56 3 situation leading up to that is, is that you -- you know that
 11:06:02 4 confession, okay, or those -- under our facts, that confession
 11:06:08 5 was not legally obtained and the judge has told you you can't
 11:06:12 6 use it, because that's what the law is.
 11:06:14 7 A. Right.
 11:06:14 8 Q. And that's the only evidence that you can use and
 11:06:16 9 it's gut wrenching, like you can curl up underneath the bed and
 11:06:22 10 cry for, you know, years, but my question is: Are you going to
 11:06:28 11 really be able to do it?
 11:06:30 12 A. If it was a confession, yes, because stories change
 11:06:32 13 all the time.
 11:06:34 14 Q. Well --
 11:06:34 15 A. If the evidence, you know, I --
 11:06:40 16 Q. I'm not trying to make your answer based on if it was
 11:06:42 17 a confession. I've just simply used that as an example.
 11:06:48 18 A. I understand.
 11:06:48 19 Q. It could be something else, and I'm not trying to tie
 11:06:50 20 you to the point specifically it's a confession. It's just --
 11:06:54 21 just kind of an easy way to explain it.
 11:06:56 22 But whatever evidence it was, you know that you
 11:07:00 23 if you considered it, it would overwhelmingly establish guilt;
 11:07:04 24 and if you didn't, it would shift -- you would have no evidence
 11:07:08 25 to convict the person on and you are convinced under the laws
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11:07:12 1 and the facts that lead up to it that you can't use that only --
 11:07:16 2 that only piece of evidence. How do you vote?
 11:07:16 3 MS. HARTMAN: Your Honor, I'm going to object to
 11:07:22 4 the lawyer's phrase. He's not asking whether she can follow the
 11:07:24 5 law or would she violate her oath.
 11:07:28 6 THE COURT: Overruled.
 11:07:32 7 Q. (By Mr. Ray) How would you answer?
 11:07:34 8 A. I would -- I can't tell you. I don't know. I
 11:07:38 9 haven't been put there yet. If I was, I'm sure I would have to
 11:07:40 10 come to some kind of a -- I just don't know.
 11:07:44 11 MR. RAY: Your Honor, we challenge for cause and
 11:07:46 12 provided to the Court's ruling that I make my motion as near the
 11:07:50 13 time as I can.
 11:07:52 14 THE COURT: Thank you. Do you wish to question?
 11:07:56 15 MS. CALLAGHAN: Yes, Your Honor.
 11:07:56 16 VOIR DIRE EXAMINATION
 11:07:56 17 BY MS. CALLAGHAN:
 11:07:56 18 Q. Ms. Greene, the ultimate question here is can you
 11:08:00 19 follow the law. Okay? If -- if you took an oath to follow the
 11:08:06 20 law, you told the judge, I will follow the law --
 11:08:08 21 A. Right.
 11:08:08 22 Q. -- and I take an oath to do so, could you follow the
 11:08:12 23 oath and disregard the evidence if you found it illegally
 11:08:16 24 obtained?
 11:08:16 25 A. Yes.
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11:08:16 1 Q. And even if that means the person goes free?

11:08:22 2 A. I take an oath and I say, I can, then that's what I
11:08:26 3 have to do even though personally, it might be hard to do that.

11:08:30 4 Q. Okay. So you could follow the law, if the judge
11:08:34 5 instructed you --

11:08:34 6 A. I could follow it, yes.

11:08:36 7 Q. -- if the judge instructed you that -- that you must
11:08:38 8 disregard evidence that was obtained illegally?

11:08:40 9 A. Yes.

11:08:42 10 Q. Okay.

11:08:44 11 THE COURT: Ms. Greene, when you said you didn't
11:08:46 12 know what you would do before, what -- what did you mean by
11:08:50 13 that?

11:08:52 14 MS. GREENE: Your -- your personal feelings as a
11:08:54 15 human being. I mean, you have to -- you have to put that aside,
11:08:58 16 and it's not something that I can just sit here and make a
11:09:00 17 decision on instantly. I don't -- I don't know.

11:09:06 18 THE COURT: But in a situation where the law
11:09:08 19 required you, if you found evidence to have been illegally
11:09:14 20 obtained --

11:09:14 21 MS. GREENE: It can't be used, and that's not
11:09:16 22 something that we can base our decision on.

11:09:20 23 THE COURT: Okay. So your statement to me and
11:09:22 24 your statement to Mr. Ray about not knowing what you would do --

11:09:28 25 MS. GREENE: He said -- what I took it as is can
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11:09:30 1 you put that aside. It's hard for me to put that aside, even
11:09:34 2 though you have to. It's not something that, you know -- I
11:09:34 3 don't --

11:09:38 4 THE COURT: Could you -- could you put it aside?

11:09:40 5 MS. GREENE: You'd have to.

11:09:42 6 THE COURT: Okay. I'll -- do you wish to
11:09:44 7 question her any further before my ruling?

11:09:44 8 VOIR DIRE EXAMINATION

11:09:48 9 BY MR. RAY:

11:09:48 10 Q. Just one question, and I'm not trying to argue with
11:09:50 11 you. Quite frankly, you've -- depending on the way the question
11:09:56 12 is phrased, there is two different answers. My question has got
11:10:00 13 a few more facts in it and, quite frankly, I'll admit to you it
11:10:04 14 is a -- it is a little bit more elaborate introduction of those
11:10:08 15 facts, as opposed to can you follow the law.

11:10:12 16 A. Uh-huh.

11:10:12 17 Q. Okay. It's real easy for anyone to say, I can follow
11:10:16 18 the law, and you can get the best -- and you're certainly an
11:10:20 19 example. You can get somebody that forges checks his whole life
11:10:24 20 and say, Could you follow the law, and he would say, Yes, and
11:10:26 21 then he will go right up here and forge a check.

11:10:28 22 What -- what I'm getting at is can you, not just
11:10:32 23 in a vacuum of the question, can you follow the law, okay, if
11:10:40 24 this situation arises, knowing that what -- what's going to
11:10:46 25 happen if you do that, because there is a consequence with the
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11:10:52 1 decision if you have a situation like what we're talking about.

11:10:54 2 We're not talking about when the trial is over. There is no
11:10:58 3 death penalty. There's no life sentence. There's no whatever
11:11:00 4 the sentence would be, and what I'm asking you, because I've,
11:11:06 5 quite frankly, have heard it both ways and this is just one of
11:11:10 6 these times that you have to pin somebody down. Are you really
11:11:12 7 going to be able to do it?

11:11:14 8 A. Yes.

11:11:14 9 Q. Okay. Can I rely on that?

11:11:16 10 A. Yes.

11:11:20 11 THE COURT: Challenge for cause is overruled.

11:11:22 12 Q. (By Mr. Ray) 100 percent?

11:11:24 13 A. 100 percent.

11:11:30 14 Q. Hang on just a second.

11:11:56 15 Okay. Are you tired of talking about that?

11:12:00 16 A. (Venireperson nods.)

11:12:04 17 Q. Let's see here. How about some easy questions, do
11:12:08 18 you want some of them? Okay. Let's just make sure we're
11:12:24 19 comfortable on this.

11:12:26 20 These are the two special issue questions that
11:12:28 21 you've already seen. Okay? Ms. Callaghan -- I hated that she
11:12:32 22 gets to go first, because she pays attention to detail better
11:12:36 23 than me sometimes, but you get an additional instruction after
11:12:40 24 this first question and I just want to make sure that you're
11:12:44 25 comfortable with that.

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11:12:44 1 In deliberating on this specific issue, that is
11:12:48 2 Special Issue No. 1, the one that we call future dangerousness
11:12:54 3 just because that's the easiest way to characterize it, you're
11:12:56 4 instructed to consider all evidence of the guilt/innocence and
11:13:00 5 the punishment phase stage, including any evidence you might
11:13:02 6 have heard about the defendant's background or character. Okay.
11:13:04 7 In other words, like Lisa said, you're going to hear most of the
11:13:10 8 time -- I can't promise you that you will just this particular
11:13:14 9 question, but you hear evidence that is limited basically in the
11:13:16 10 judge's finding of relevance.

11:13:20 11 If he thinks -- if the judge thinks it's
11:13:22 12 relevant, you're going to hear about it. It could be something
11:13:24 13 that happened when somebody is five years old. It could be
11:13:28 14 something when they've been in prison for something else or
11:13:30 15 maybe they've been a Boy Scout, a Marine Corps hero. It's a
11:13:34 16 variety of things you hear, but that's what that means,
11:13:38 17 defendant's background or his character. Some people have good
11:13:42 18 character. Some people have bad character. Some people don't
11:13:44 19 have any character. Some people have character if they're asked
11:13:48 20 too many pointed questions or the circumstances of the offense
11:13:52 21 that militate for, which means -- I don't know where they
11:13:54 22 thought up that word. I've only seen it in this question, but
11:13:58 23 it means give the death penalty, or mitigate against imposition
11:14:00 24 of the death penalty. Do you see all of that?

11:14:06 25 A. (Venireperson nods.)

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11:14:06 1 Q. And what that means is in the context of the first
 11:14:10 2 question, even though we have a separate question that we call
 11:14:14 3 mitigation and that's what mine is entitled and that's what
 11:14:18 4 hers -- you're going to consider mitigation in the context of
 11:14:24 5 future dangerousness as well. Do you understand that?

11:14:26 6 A. Yes.

11:14:28 7 Q. And in this question, just like when the state has
 11:14:30 8 the burden of proof to prove a person is guilty beyond a
 11:14:36 9 reasonable doubt, you're going to consider that they have to --
 11:14:40 10 they have to prove that with all the facts of the case, the
 11:14:46 11 defendant's background and his character, okay, and any
 11:14:50 12 mitigation that you've got, okay, and anything that suggests he
 11:14:56 13 ought to get the death penalty, all of that together has to
 11:15:00 14 prove to you, convince to you beyond a reasonable doubt that
 11:15:05 15 he's going to be a future danger to society. Do you see how
 11:15:06 16 that works?

11:15:06 17 A. Yes.

11:15:08 18 Q. And just because you found a person guilty of capital
 11:15:14 19 murder beyond a reasonable doubt, killing two or more people, is
 11:15:18 20 that particular question always going to have the same answer to
 11:15:20 21 it?

11:15:24 22 A. I -- no.

11:15:26 23 Q. I'm sorry?

11:15:26 24 A. No.

11:15:28 25 Q. Okay. Might get a yes if they convince you, and you
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11:17:12 1 question yes. It takes all 12 to answer it no, and that's just
 11:17:16 2 exactly the opposite of the first question. It takes all 12 to
 11:17:20 3 answer the future dangerousness question yes and it takes 10 to
 11:17:24 4 answer no, but anytime you're dealing with these 10 people in
 11:17:28 5 either question, what you think supports that answer and what
 11:17:30 6 the guy sitting next to you thinks supports that answer doesn't
 11:17:34 7 have to be the same thing. You understand that?

11:17:36 8 A. Yes.

11:17:38 9 Q. You might think that guy is the fool for what he
 11:17:40 10 thinks is mitigating. I would never think that's mitigating.
 11:17:42 11 Okay?

11:17:44 12 A. Okay.

11:17:44 13 Q. And he could think the same thing about you.

11:17:46 14 A. Right.

11:17:46 15 Q. And one other thing, while those are the numbers that
 11:17:50 16 are required to answer those questions, okay, you do not have to
 11:17:56 17 have that answer and what I mean by that is before you can
 11:18:00 18 answer the questions yes or no, it has to be 10 or 12, depending
 11:18:04 19 on which question it is, but the jury, for instance, could have
 11:18:06 20 a six/six vote. You understand that?

11:18:10 21 A. Uh-huh.

11:18:10 22 Q. And what that means is you wouldn't be able to answer
 11:18:14 23 the question, but that does not mean that you can't have that
 11:18:16 24 verdict. Do you understand that?

11:18:20 25 MS. CALLAGHAN: Your Honor, the state would
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11:15:30 1 might get a no if they don't.

11:15:42 2 The second question: The only -- that's not the
 11:15:46 3 only -- there is an additional element that you have to consider
 11:15:50 4 in this question. You've got circumstances of the offense,
 11:15:54 5 you've got the defendant's character or background, then there
 11:15:58 6 is one additional thing and that's the personal moral
 11:16:00 7 culpability of the defendant. Okay? What's his moral blame or
 11:16:08 8 responsibility? That's what -- that's in addition to everything
 11:16:12 9 else. Is there a sufficient mitigating circumstance or
 11:16:16 10 circumstances -- could be only one -- to warrant that a life
 11:16:22 11 sentence be imposed? You could answer that either way?

11:16:26 12 A. (Venireperson nods.)

11:16:26 13 Q. Let me tell you a couple of things about that and
 11:16:28 14 then I'll ask you that question again. Down here at the bottom,
 11:16:32 15 you're going to be instructed that you shall consider mitigating
 11:16:38 16 evidence to be evidence that a juror might regard as reducing
 11:16:42 17 the defendant's moral blameworthiness, his moral responsibility.

11:16:46 18 A. Right.

11:16:46 19 Q. You could consider all of that?

11:16:48 20 A. Yes.

11:16:48 21 Q. A couple of things you need to know, number one, you
 11:16:52 22 don't have to agree on what supports a yes answer to this with
 11:16:58 23 the other jurors. Okay?

11:17:00 24 A. Okay.

11:17:02 25 Q. It only takes -- it only takes 10 to answer the

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11:18:22 1 object. That's not the law. You would not have a verdict in
 11:18:26 2 that case. That is not a verdict.

11:18:28 3 THE COURT: Sustained as phrased. If you would
 11:18:30 4 just rephrase.

11:18:32 5 Q. (By Mr. Ray) You wouldn't have an answer. Does that
 11:18:34 6 make sense? If you have a six to six vote on Special Issue
 11:18:38 7 No. 1, you just can't answer the question.

11:18:40 8 A. Yes.

11:18:40 9 Q. Okay. If you're sitting back in the jury room and
 11:18:52 10 there is a -- and I'm not going to ask you -- my question is not
 11:18:56 11 going to say which way you are, but if you were in a position
 11:19:00 12 where it's one vote from being able to weigh the answer to the
 11:19:04 13 question, whether it's yes or no and you are in the minority,
 11:19:12 14 okay --

11:19:12 15 A. Okay.

11:19:12 16 Q. -- in other words, you change your vote, it's either
 11:19:16 17 all yes or all -- or 10 no or however it is. I'm not talking
 11:19:20 18 about which way it is, which side of the fence you're on, but
 11:19:24 19 you really believe that way, okay, how do you ultimately end up
 11:19:34 20 if that's the situation?

11:19:36 21 A. With what I --

11:19:38 22 Q. Okay. And I'm not saying that another juror can't --
 11:19:42 23 might not be able to convince you, but I'm saying afterward, if
 11:19:46 24 they haven't convinced you. There is nothing they can say to
 11:19:50 25 convince you to change your vote. Does your vote stay or does
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11:19:52 1 it change, because it's 7:30 on Friday night before
 11:19:54 2 Thanksgiving?
 11:19:58 3 A. I have my own mind and my own decision. I can make
 11:20:00 4 it on -- I can't base it on if I can listen to others.
 11:20:04 5 Q. Can I rely on that?
 11:20:06 6 A. Yeah, yes, yeah.
 11:20:16 7 Q. What do you like about the crime shows?
 11:20:18 8 A. The forensic stuff.
 11:20:20 9 Q. The forensics. Okay.
 11:20:20 10 A. I go to sleep listening to it. It just intrigues me
 11:20:24 11 to find out about that kind of stuff.
 11:20:26 12 Q. Do you like David Caruso? Is that his name?
 11:20:28 13 A. No, no. I watch Court TV. That's mostly the one I
 11:20:32 14 watch.
 11:20:36 15 Q. And my -- we don't have a device here that sends the
 11:20:40 16 fingerprints around and makes them all -- you're not going to
 11:20:44 17 see that. If that's what you're wanting to see, you're in the
 11:20:46 18 wrong place.
 11:20:48 19 A. No.
 11:20:50 20 Q. Well, after you've heard all of that, do you still
 11:20:56 21 want to be on this jury?
 11:20:58 22 A. If I'm needed, I'd like to.
 11:21:04 23 Q. We've got 150 people.
 11:21:04 24 A. I understand.
 11:21:06 25 Q. I can do with you or without you numberswise.

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11:21:10 1 A. I didn't think it was my decision, to be honest.
 11:21:12 2 Q. Your opinion has a lot to do with my decision.
 11:21:16 3 A. That's -- either way is fine.
 11:21:18 4 Q. You know, you could have got -- if you -- maybe it's
 11:21:22 5 a little late in the game now, but your seven-year-old child --
 11:21:26 6 A. He's eight.
 11:21:26 7 Q. Eight.
 11:21:26 8 A. He just turned eight, so --
 11:21:28 9 Q. If he's going to be left without adequate
 11:21:32 10 supervision, you could have been gone two hours ago.
 11:21:34 11 A. But he's not. He's handled just fine, so --
 11:21:40 12 Q. Okay. Well --
 11:21:42 13 A. I've got a lot of teenagers in my house. I've got
 11:21:44 14 three teenagers.
 11:21:46 15 Q. Maybe you're better off down here.
 11:21:46 16 A. Maybe.
 11:21:48 17 Q. There won't be any teenagers in the jury room.
 11:21:52 18 What's a technical supervisor do for Oncor?
 11:21:56 19 A. My husband?
 11:21:56 20 Q. Is that what he does? I thought that's what you do.
 11:21:58 21 A. No. I'm an advisor.
 11:21:58 22 Q. Oh, I see.
 11:21:58 23 A. I'm just an advisor.
 11:22:02 24 Q. That's the power company, right?
 11:22:06 25 A. Yes, yes.

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11:22:08 1 Q. What do you do?
 11:22:08 2 A. I deal with problems. The --
 11:22:08 3 THE REPORTER: Pardon me?
 11:22:16 4 A. -- the mayor's office, if something is not working
 11:22:20 5 right, I have to get involved and make it happen, so I'm like a
 11:22:24 6 liaison between the customers and us.
 11:22:26 7 Q. (By Mr. Ray) When the city power goes off, you have
 11:22:28 8 to listen to the mayor's office?
 11:22:28 9 A. Anybody. You know, Hillwood, Alliance, I've got
 11:22:32 10 them. I've got the Bureau of Engraving. I have my -- everybody
 11:22:36 11 is important, you know.
 11:22:36 12 Q. What is that mayor's name out there, Robbins, Marty
 11:22:36 13 Robbins?
 11:22:40 14 A. I just get the calls. I don't -- I'm not sure
 11:22:42 15 what --
 11:22:44 16 Q. Hillwood, that's Ross Perot, right?
 11:22:48 17 A. Yes.
 11:22:48 18 Q. Okay. Tell me what you feel about a life sentence
 11:23:06 19 He told me to ask this. Giving somebody a life sentence for
 11:23:12 20 capital murder, how do you feel about that?
 11:23:16 21 A. Well, their life is spared. They got a life
 11:23:18 22 sentence.
 11:23:18 23 Q. But how do you feel about it? I mean, I know you
 11:23:20 24 know what it is. Can you do it?
 11:23:22 25 A. Yeah.

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11:23:26 1 Q. Do you understand what a life sentence is?
 11:23:30 2 A. Life in prison.
 11:23:30 3 Q. Do you understand what a life sentence really means?
 11:23:34 4 A. For the rest of their life.
 11:23:40 5 Q. It actually means 40 calendar years.
 11:23:44 6 A. Oh, that's right. She said that.
 11:23:46 7 Q. Which is, if you're my age, that's a life sentence.
 11:23:52 8 Your son is --
 11:23:52 9 A. Okay. If it's a life sentence with no possibility of
 11:23:56 10 parole, that's a life sentence.
 11:24:00 11 Q. Well, it's actually -- the law says it's a life
 11:24:02 12 sentence with no possibility of parole until 40 calendar years
 11:24:08 13 have been served.
 11:24:08 14 A. Oh, okay.
 11:24:08 15 Q. Do you see the difference?
 11:24:10 16 A. Yes.
 11:24:10 17 Q. I mean, there is such a thing as life with no parole,
 11:24:14 18 which means if you do one year or 1,000 years, but that's not
 11:24:18 19 what the law is and that's not what the law is in this case. As
 11:24:22 20 a practical matter, a life sentence could be for the rest of
 11:24:26 21 your life just depending on your age and your health.
 11:24:30 22 MS. CALLAGHAN: Your Honor, I feel compelled t
 11:24:32 23 object at this point. I don't think defense -- I think he was
 11:24:36 24 trying to explain it, but it came out a little sideways, that
 11:24:40 25 life without parole doesn't exist in this state.

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11:24:42 1 MR. RAY: Well, it doesn't.
 11:24:42 2 MS. CALLAGHAN: I think that's what he was
 11:24:46 3 trying to say. It just came out a little odd.
 11:24:46 4 THE COURT: Okay. That's what I understood him
 11:24:48 5 to say.
 11:24:50 6 MS. CALLAGHAN: Okay. All right.
 11:24:50 7 THE COURT: Do you understand that there is no
 11:24:52 8 life without parole in the State of Texas?
 11:24:54 9 MS. GREENE: Yeah, I gather that from what he
 11:24:56 10 just said.
 11:24:58 11 MS. CALLAGHAN: Okay. It's just me, then.
 11:25:00 12 MS. GREENE: I didn't know that.
 11:25:00 13 MR. RAY: Judge, I would like to explain to
 11:25:04 14 Ms. Greene the specifics that the Court has prohibited me from
 11:25:08 15 talking about, as far as the parole board.
 11:25:10 16 THE COURT: That will be denied.
 11:25:14 17 MR. RAY: I'm sorry?
 11:25:14 18 THE COURT: Denied.
 11:25:14 19 Q. (By Mr. Ray) What I can tell you, Ms. Greene, is
 11:25:16 20 that if you get convicted of capital murder and you get a life
 11:25:18 21 sentence, you're going to serve 40 years before you are eligible
 11:25:26 22 for parole. Okay? And just because you're eligible, that
 11:25:30 23 doesn't mean you make parole. That just means you're eligible
 11:25:32 24 at that time, but there is not going to be any -- they can't let
 11:25:36 25 you out before then. You understand that?
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11:25:40 1 A. Yes.
 11:25:40 2 Q. Knowing all that, is a life sentence a viable option
 11:25:42 3 for you?
 11:25:44 4 A. Yes.
 11:25:44 5 Q. All other things considered?
 11:25:46 6 A. Yes.
 11:25:46 7 MR. RAY: All right. Thank you, Ms. Greene.
 11:25:48 8 THE COURT: Okay. Ms. Greene, if you will wait
 11:25:50 9 in the hallway for about two minutes, we'll have a decision for
 11:25:54 10 you. Okay?
 11:25:54 11 MS. GREENE: Okay.
 11:26:10 12 (Venireperson Greene leaves the proceedings.)
 11:26:10 13 MS. HARTMAN: The state accepts.
 11:26:12 14 MR. RAY: We need just a second.
 11:26:14 15 (Off-the-record discussion.)
 11:28:04 16 MR. RAY: We'll take her, Judge.
 11:28:06 17 THE COURT: Okay. If you will bring her back
 11:28:08 18 in, please.
 11:28:08 19 (Venireperson Greene enters the proceedings.)
 11:28:20 20 THE COURT: Okay. Ms. Greene, you can stay
 11:28:28 21 right there. You will be on the jury. You have been selected,
 11:28:32 22 so the contact information will remain the same, is that --
 11:28:36 23 VENIREPERSON GREENE: My mobile number has
 11:28:38 24 changed since then, and that's the only number they have.
 11:28:40 25 THE COURT: Well, what would the new number be?
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11:28:42 1 VENIREPERSON GREENE: 817-301-5484.
 11:28:48 2 THE COURT: Okay. The coordinator or somebody
 11:28:50 3 with the court will be in contact with you again. The trial is
 11:28:56 4 set for the 22nd, which is a Monday, but they'll be in contact
 11:29:00 5 with you before then. Okay? Kind of block out that week and
 11:29:06 6 potentially the next one.
 11:29:06 7 VENIREPERSON GREENE: Okay.
 11:29:08 8 THE COURT: Okay. Very good. Thank you.
 11:29:08 9 (Off-the-record discussion.)
 11:33:18 10 THE COURT: Let's go ahead and go back on the
 11:33:20 11 record, then.
 11:33:22 12 Okay. It's my understanding that there has been
 11:33:26 13 an agreement between the state and defense that we will excuse
 11:33:30 14 Veniremember Nos. 96 and 97; 96 being Joan Katzenmeier; and 97,
 11:33:40 15 Robert Dunnam.
 11:33:40 16 MS. CALLAGHAN: That's correct from the state,
 11:33:42 17 Your Honor.
 11:33:42 18 MR. MOORE: That's correct.
 11:33:44 19 THE COURT: Okay. Very well. They are excused.
 11:33:48 20 So if they should show up, I don't know -- it's probably too
 11:33:54 21 late to contact them.
 11:34:00 22 (Off-the-record discussion.)
 11:35:48 23 THE COURT: Ready for Mr. Reasoner?
 11:35:48 24 MS. HARTMAN: State's ready.
 11:35:52 25 MR. RAY: We're ready.
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11:35:52 1 (Venireperson Reasoner enters the proceedings.)
 11:36:08 2 THE COURT: Mr. Reasoner, right up here, please.
 11:36:14 3 How are you doing this morning?
 11:36:16 4 VENIREPERSON REASONER: Fine. And you?
 11:36:16 5 THE COURT: Thank for your patience in waiting
 11:36:18 6 out there. Okay. Mr. Reasoner, let me begin by introducing
 11:36:30 7 myself. My name is David Richards, and I'm a visiting judge
 11:36:30 8 here in Fort Worth. Judge Bob Gill is the elected judge of this
 11:36:34 9 court and he will be presiding in the trial and I'm just helping
 11:36:38 10 him select jurors in this case.
 11:36:40 11 And I don't know whether or not you've ever been
 11:36:42 12 on jury service before, but in a normal type of case, we bring
 11:36:44 13 all the prospective jurors in in a big group and they question
 11:36:52 14 as you as a group, because this is a case in which the state is
 11:36:56 15 seeking the death penalty, we -- because of the nature of the
 11:37:00 16 case, we bring in prospective jurors one at a time and conduct
 11:37:06 17 this part of the trial, which is called voir dire, which is a
 11:37:10 18 French term meaning to speak the truth.
 11:37:12 19 This is the one opportunity that the lawyers
 11:37:14 20 have to get familiar with your background, tell you a little bit
 11:37:20 21 about the law and find out whether you would be a -- make a good
 11:37:26 22 juror in this particular type of case.
 11:37:28 23 It's also your opportunity if you have any
 11:37:30 24 questions of the attorneys about what you can expect in this
 11:37:34 25 case and questions about the law, you have an opportunity to do
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11:37:36 1 that, too. Okay?

11:37:38 2 VENIREPERSON REASONER: Okay.

11:37:38 3 THE COURT: A couple of ground rules. You may

11:37:40 4 have noticed that the court reporter is taking down everything

11:37:44 5 that I say. She is required to take down everything that's said

11:37:46 6 in the courtroom, whether it's me, you or the lawyers. So try

11:37:50 7 to make your answers audible. Try to avoid shaking and nodding

11:37:54 8 of the head, because she can't take that down.

11:37:58 9 VENIREPERSON REASONER: Okay.

11:37:58 10 THE COURT: Also, try to avoid the uh-huh and

11:38:00 11 the huh-uhs. Those answers are very difficult to read and very

11:38:06 12 difficult for her to take down. A yes or no would be

11:38:10 13 preferable. Also, try not to talk over the questions and by

11:38:12 14 that, I mean, it's normal in conversation if someone is asking

11:38:18 15 you a question and before they get to the end of the question,

11:38:20 16 you know what your answer is and you know what they're getting

11:38:26 17 at, to go ahead and volunteer the answer. Try to avoid that

11:38:28 18 here. She -- for one thing, she can't take down two people

11:38:32 19 talking at the same time. So you want to try to avoid that. So

11:38:38 20 leave a one second or so interval between their questions and

11:38:40 21 your answers. That will be a good way to do that.

11:38:46 22 All right. This is the opportunity the

11:38:48 23 attorneys have to talk to you about the law in this case.

11:38:50 24 They're not going to be able to discuss the particular facts of

11:38:54 25 the case. You'll have a general idea of what it is that the

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11:38:58 1 defendant is charged with having done, but you're not going to

11:39:02 2 hear the state go into the details of the facts of the offense.

11:39:06 3 If anything, they'll talk to you generally about the death

11:39:10 4 penalty by talking in hypothetical fact situations that aren't

11:39:16 5 related to the facts that they expect to prove in this case.

11:39:18 6 Okay?

11:39:20 7 VENIREPERSON REASONER: Okay.

11:39:20 8 THE COURT: All right. Let me begin by

11:39:22 9 introducing the attorneys who are present. Tim Curry is the

11:39:24 10 elected District Attorney of Tarrant County, but he's not

11:39:28 11 present. That's more of an administrative-type position that he

11:39:30 12 holds. He is normally represented, as in this case, by

11:39:36 13 assistant criminal district attorneys and today we have two of

11:39:38 14 his assistants and they're going to be the same attorneys

11:39:42 15 prosecuting throughout the trial. They are Ms. Michele

11:39:44 16 Hartman --

11:39:44 17 MS. HARTMAN: Good morning.

11:39:46 18 THE COURT: -- and Ms. Lisa Callaghan.

11:39:46 19 MS. CALLAGHAN: Good morning.

11:39:48 20 VENIREPERSON REASONER: Good morning.

11:39:48 21 THE COURT: And the criminal defense attorneys

11:39:50 22 in this case are two Fort Worth criminal lawyers, Mr. Tim

11:39:54 23 Moore --

11:39:54 24 MR. MOORE: Hi.

11:39:56 25 THE COURT: -- and Bill Ray.

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11:39:56 1 MR. RAY: Hi. How are you doing?

11:39:58 2 VENIREPERSON REASONER: Pretty good. You?

11:39:58 3 THE COURT: And the defendant is in this case is

11:40:00 4 on the far end. He is Mr. Billy Jack Crutsinger, and you can

11:40:04 5 see his name printed up there on the board.

11:40:08 6 VENIREPERSON REASONER: Okay.

11:40:16 7 THE COURT: Okay. I guess I've gone over

11:40:18 8 everything here. There is an oath that I need to give you which

11:40:20 9 is required of all prospective jurors in all criminal cases, so

11:40:24 10 if you would, raise your right hand.

11 11 MICHAEL RAY REASONER,

12 12 having been duly sworn to make true answers to such questions as

13 13 may be propounded by the Court or under its direction, touching

14 14 upon his service and qualification as a juror, gave answers as

15 15 follows:

11:40:38 16 THE COURT: Okay. There we go. Thank you.

11:40:40 17 The way we're going to proceed is the district

11:40:44 18 attorney's office, Ms. Hartman, I guess it is -- Ms. Callaghan

11:40:46 19 is not in the building, is going to ask you questions and then

11:40:52 20 after she is finished, we'll probably take about a five-minute

11:40:56 21 break and then the defense attorneys are going to have an

11:40:58 22 opportunity to question you. None of these questions are tests.

11:41:04 23 Even after they talk to you about the law and ask for your

11:41:06 24 impression, there is no right or wrong answer. They just want

11:41:08 25 to get an honest answer from you as to how you feel about the

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11:41:12 1 law and whether or not you believe you could apply the law.

11:41:16 2 So with that, I'll turn it over to Ms. Hartman.

11:41:20 3 MS. HARTMAN: Thank you, Your Honor.

11:41:20 4 VOIR DIRE EXAMINATION

11:41:20 5 BY MS. HARTMAN:

11:41:20 6 Q. Good morning.

11:41:22 7 A. Good morning.

11:41:22 8 Q. How are you doing?

11:41:22 9 A. Fine. You?

11:41:24 10 Q. Fine. Thank you.

11:41:24 11 As the Judge has told you, we are in the process

11:41:28 12 of selecting a jury to hear a capital murder case in which the

11:41:32 13 State of Texas is going to ask that jury, in the event of a

11:41:34 14 conviction, to return a death sentence as the punishment in the

11:41:38 15 case, based on the law and the evidence, and it's important for

11:41:42 16 us, because of the serious nature of the -- the type of case and

11:41:46 17 the potential consequences, that we go over with you what the

11:41:50 18 law on capital murder is to make sure that you understand it and

11:41:54 19 that you're comfortable with it.

11:41:56 20 And the law that we'll be talking about with you

11:41:58 21 here today, you don't have to memorize it, because if you're a

11:42:02 22 juror, it's going to be given to you on paper at the time of

11:42:04 23 your deliberations, okay, but we need to make sure that that's

11:42:06 24 not going to be the first time you see it, that you know what it

11:42:12 25 is going into the trial, you know, you kind of have an

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11:42:14 1 understanding of what's at play, basically. Okay?

11:42:18 2 A. All right.

11:42:20 3 Q. We anticipate that this trial will start the week of

11:42:22 4 September the 22nd and go anywhere from five days to two weeks,

11:42:26 5 depending upon how long it takes to put on the evidence and the

11:42:30 6 jury deliberations and so forth. Is there anything about that

11:42:34 7 particular time period that would cause a difficulty for you?

11:42:38 8 A. Well, I'm closing on a house.

11:42:38 9 Q. I'm sorry?

11:42:40 10 A. I'll be closing on a house.

11:42:44 11 Q. What day is that going to be?

11:42:44 12 A. As soon as the title company can get us in.

11:42:44 13 Q. Okay.

11:42:46 14 A. Supposed to have been this week, but they're saying

11:42:50 15 next week now.

11:42:50 16 Q. Okay. Well, if it's next week, obviously, there

11:42:52 17 wouldn't be any type of in interference, because we wouldn't be

11:42:56 18 starting the trial until week from Monday next. So are you

11:43:02 19 moving within the county? Let me ask you that first.

11:43:06 20 A. Yes, ma'am.

11:43:06 21 Q. Okay. So you're not moving out of Tarrant County?

11:43:08 22 A. No, ma'am.

11:43:10 23 Q. All right. Would it be possible for you to make a

11:43:14 24 phone call and find out, if you were to tell them that you might

11:43:18 25 be a juror in a case, would you be able to determine whether or

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11:43:22 1 not --

11:43:22 2 A. They can't tell you.

11:43:24 3 Q. They can't tell you? Are you waiting on like

11:43:28 4 approval or --

11:43:28 5 A. The people buying my house is waiting. They're

11:43:30 6 supposed to have been approved, and now they're going back and

11:43:32 7 checking them out.

11:43:34 8 Q. Oh, okay. So there is a chance the whole thing could

11:43:36 9 fall through?

11:43:36 10 A. Possibly.

11:43:38 11 Q. I hope that doesn't happen, but, I mean, is that kind

11:43:40 12 of where you're at?

11:43:40 13 A. No. They said it's going through. It's just he's

11:43:44 14 got to get written documentation, to fax something. There's

11:43:44 15 a --

11:43:48 16 Q. Okay.

11:43:48 17 A. It's been postponed. This is the third week.

11:43:48 18 Q. Okay.

11:43:50 19 A. They said for sure next week.

11:43:50 20 Q. They said for sure next week?

11:43:52 21 A. They said that the last two weeks, so I couldn't say

11:43:56 22 when it was.

11:43:56 23 Q. All right. Well, here is the difficulty or here is

11:44:00 24 the dilemma, I guess. At the conclusion of your speaking with

11:44:06 25 us here today, you will know today whether you are a juror or

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11:44:08 1 not. That -- you will have that information today. It's not

11:44:14 2 like you'll have to wait to hear from us. If you happen to be a

11:44:18 3 juror in this case, you would have to report for duty whenever

11:44:22 4 we start, which at this point, is going to be September the

11:44:26 5 22nd, that Monday. Obviously, things can change, but that's

11:44:32 6 kind of the target date at this point.

11:44:34 7 A. Yes, ma'am.

11:44:36 8 Q. If you are selected to be a juror, you will basically

11:44:38 9 be with us until the case is done. I mean, you will be working

11:44:44 10 with us Monday through Friday. General working hours are 9:00

11:44:46 11 in the morning until 5:00 in the evening. It could be a little

11:44:50 12 bit earlier, could be a little bit later, depending upon where

11:44:54 13 we're at and what type of evidence is being presented at the

11:44:56 14 time.

11:45:00 15 If your house closing were to -- I guess if the

11:45:06 16 title company called you up and said, Hey, the soonest we can

11:45:08 17 close is or the first opportunity we get to close is September

11:45:10 18 the 24th, okay, that's when we've got you set up. That's as

11:45:16 19 soon as we can get you in, and you're a juror, are you going to

11:45:22 20 be able to set aside the business about the house closing, or is

11:45:26 21 it going to interfere with your being able to sit and fairly and

11:45:30 22 impartially listen to the evidence and the testimony in this

11:45:34 23 trial?

11:45:34 24 A. As far as being able to go to the closing?

11:45:36 25 Q. I'm sorry?

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11:45:38 1 A. As far as being able to go to the closing?

11:45:40 2 Q. Right. I mean, if you're down here with us, we don't

11:45:42 3 stop trial to let you go off and do your closing or whatever

11:45:48 4 might be going on.

11:45:50 5 A. I guess, I'd have to postpone the closing if I was

11:45:52 6 here.

11:45:54 7 Q. Okay. What are the possible consequences of that; do

11:45:54 8 you know?

11:45:56 9 A. Delay of the sale or maybe not even going through.

11:45:58 10 Q. I'm sorry?

11:45:58 11 A. A delay of the sale or it maybe not even going

11:46:04 12 through. I don't know.

11:46:04 13 Q. Okay. And only you can answer this question that I'm

11:46:06 14 putting to you and is the situation with the house closing and

11:46:14 15 it might be taking place while you're a juror and possibly

11:46:18 16 losing out on a house or what-have-you, I mean, I don't all of

11:46:22 17 the different possibilities, if you're sitting over in the jury

11:46:26 18 box, are you going to be able to focus on the evidence and the

11:46:28 19 testimony or are you going to be off kind of in your own world

11:46:32 20 wondering what's going on or, oh, my gosh, what if I lose my

11:46:38 21 house? I mean, are you going to be able to deal with that or

11:46:40 22 not?

11:46:40 23 A. I'd focus on the trial, but I would be wondering

11:46:44 24 about the house also.

11:46:44 25 Q. Okay.

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11:46:44 1 A. I could focus on it.
 11:46:46 2 Q. Okay. So you don't think it would interfere with
 11:46:48 3 your being able to sit as a juror?
 11:46:50 4 A. No. I mean, if that's what I have to do, that's what
 11:46:52 5 I have to do.
 11:46:54 6 Q. Okay. Well, and when the defense talks to you, they
 11:46:58 7 may let you know, and it's absolutely true that while you have a
 11:47:02 8 civic duty to report down here for jury duty, you don't
 11:47:04 9 necessarily have to serve on any particular case.
 11:47:08 10 We need 12 people who are going to be able to
 11:47:12 11 devote their time and attention to what's going on in the
 11:47:16 12 courtroom and if you can do that, that's great and if you think
 11:47:18 13 there is going to be a problem with that such that one side or
 11:47:20 14 the other is going to not get a fair shake, so to speak, because
 11:47:26 15 your mind is wondering off and you get back in the jury room and
 11:47:30 16 instead of participating in -- in the deliberations, you're just
 11:47:34 17 trying to get out, we need to know that, too. So only you can
 11:47:38 18 tell me what you're capable of doing.
 11:47:40 19 A. I'd like to take care of my own business first, but
 11:47:44 20 if I don't have a choice, then I'll do what I have to do.
 11:47:46 21 Q. Okay. So you're -- I guess what I'm hearing you
 11:47:48 22 saying, and if this is incorrect, let me know, if you get chosen
 11:47:52 23 to be on this jury, you're going to do the best you can to be a
 11:47:56 24 fair and impartial juror --
 11:47:56 25 A. Yes, ma'am.

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11:47:58 1 Q. -- regardless of what happens with the house closing?
 11:48:02 2 A. Yes, ma'am.
 11:48:02 3 Q. Okay. I also notice that you have a -- have a little
 11:48:06 4 boy that's eight.
 11:48:08 5 A. Yes, ma'am.
 11:48:08 6 Q. All right. If you are down here with us, like I
 11:48:10 7 said, generally from 9:00 to 5:00, and there is also a chance
 11:48:16 8 that in a serious case, juries can be sequestered during
 11:48:20 9 deliberations. Do you know what that means?
 11:48:22 10 A. Yes, ma'am.
 11:48:22 11 Q. Okay. Would that pose any particular problems --
 11:48:26 12 first of all, would it pose any problems just in general if you
 11:48:30 13 had to be sequestered?
 11:48:30 14 A. No, ma'am.
 11:48:32 15 Q. Okay. Would it pose any problems with your child
 11:48:34 16 being left unsupervised or -- or not being taken care of
 11:48:38 17 properly?
 11:48:38 18 A. No, ma'am.
 11:48:40 19 Q. All right. I notice that you're married. I'm
 11:48:40 20 assuming you wife would step in and --
 11:48:44 21 A. Yes, ma'am.
 11:48:46 22 Q. All right. Well, let me start then with the way --
 11:48:52 23 A. Excuse me. I may have overlooked hearing if you went
 11:48:56 24 over -- and I apologize. Are you telling him it could be a
 11:49:00 25 two-week trial?

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11:49:02 1 Q. I think I said five days to two weeks. Is that what
 11:49:06 2 you understood?
 11:49:06 3 A. Yes, ma'am.
 11:49:08 4 Q. Okay. All right.
 11:49:08 5 A. I'm sorry.
 11:49:08 6 Q. Five days to two weeks, as far as business, Monday
 11:49:12 7 through Friday type, 10 days, might be less, might be more; like
 11:49:18 8 I said, it just depends on the number of witnesses and the
 11:49:20 9 amount of evidence and how long deliberations take.
 11:49:24 10 A. Okay.
 11:49:26 11 Q. You have actually served as a juror in the past?
 11:49:28 12 A. Yes, ma'am.
 11:49:30 13 Q. So you are already familiar with the setup of -- of
 11:49:34 14 how a felony case goes to trial, and you're probably familiar
 11:49:40 15 with the rules that apply to every criminal case. I'm going
 11:49:44 16 to --
 11:49:44 17 A. It's been a few years.
 11:49:46 18 Q. I'm going to go over them with you. I know you're
 11:49:48 19 going to remember them, because they are pretty commonly known.
 11:49:54 20 Probably you recollect that a trial is handled
 11:49:56 21 in -- in two parts. The first part is where the state puts on
 11:50:00 22 evidence to prove that the person did what we've charged him
 11:50:06 23 with or her with. Okay? We have a burden of proof. We have to
 11:50:12 24 prove our case beyond a reasonable doubt in order for the jury
 11:50:14 25 to convict the person of the crime. Do you remember that?
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11:50:18 1 A. Yes, ma'am.
 11:50:20 2 Q. That standard of proof does not have a legal
 11:50:24 3 definition, and I like to tell people that the law anticipates
 11:50:28 4 that you decide what is sufficient proof. Okay? And it's
 11:50:32 5 whatever in your own heart and your own mind convinces you that
 11:50:36 6 that person is, in fact, guilty. All right?
 11:50:38 7 A. Okay.
 11:50:40 8 Q. If the state does its job, if we prove our case
 11:50:44 9 beyond a reasonable doubt, the jury would be required under law
 11:50:46 10 to return a guilty verdict. If that happens, we would then move
 11:50:50 11 into that second phase of the trial, which would be a punishment
 11:50:54 12 phase, and that would be the time that the state can present any
 11:50:58 13 other testimony or evidence about the person on trial.
 11:51:02 14 If they've got any type of prior criminal
 11:51:04 15 history, if they've got any type of bad character issues or
 11:51:08 16 they've committed other bad acts, that would be the time at
 11:51:12 17 which the jury could hear about that type of information. You
 11:51:16 18 might remember that the defense or the defendant never has a
 11:51:22 19 burden. They have no obligation at any time to put on any
 11:51:26 20 evidence, okay, because the burden of proof rests solely with
 11:51:28 21 the State of Texas. They can put on evidence if they want to,
 11:51:32 22 but they certainly don't have to. Do you remember that?
 11:51:34 23 A. Yes, ma'am.
 11:51:36 24 Q. All right. When you were a juror, did you sit
 11:51:40 25 through both phases of trial?

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11:51:42 1 A. No, ma'am. We found him guilty, and then they did
 11:51:44 2 the punishment phase themselves.
 11:51:46 3 Q. The judge did the punishment?
 11:51:48 4 A. The judge did the punishment phase, yes, ma'am.
 11:51:50 5 Q. Okay. Sometimes jurors will hang around and watch to
 11:51:54 6 see what a person gets. Did you do that or no?
 11:51:56 7 A. No, ma'am.
 11:51:58 8 Q. Okay. So you only have participated in that first
 11:52:02 9 phase?
 11:52:02 10 A. Yes, ma'am, and then they let us go.
 11:52:04 11 Q. And then they let you go. Okay. All right.
 11:52:08 12 A couple of other rules in a criminal case that
 11:52:10 13 you will probably remember is that a defendant has an absolute
 11:52:16 14 right not to testify, and if they choose not to testify, the
 11:52:20 15 jury can't hold that against them for any reason. Do you
 11:52:22 16 remember that?
 11:52:24 17 A. Yes, ma'am.
 11:52:24 18 Q. Okay. If you were a juror in a criminal case and you
 11:52:26 19 were instructed by the Court that that defendant in that case
 11:52:30 20 had not testified, you could not consider that failure to
 11:52:34 21 testify for any reason. Could you follow that law?
 11:52:38 22 A. Yes, ma'am.
 11:52:38 23 Q. All right. Criminal defendants have a presumption of
 11:52:44 24 innocence and that goes back to if the state doesn't meet its
 11:52:48 25 burden, if we don't prove our case beyond a reasonable doubt,
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11:52:52 1 that presumption of innocence kicks in and the person is found
 11:52:54 2 not guilty. Could you follow that instruction?
 11:52:58 3 A. Yes, ma'am.
 11:52:58 4 Q. Okay. Any questions about how a criminal trial just
 11:53:02 5 in general works?
 11:53:02 6 A. No, ma'am.
 11:53:04 7 Q. All right. Well, let's talk a little bit about
 11:53:08 8 capital murder, and if you look over here on the screen, capital
 11:53:12 9 murder is a combination of a couple of things. First of all,
 11:53:16 10 you have to have a murder, an intentional killing, and then to
 11:53:22 11 elevate that -- that murder, that intentional killing, up one
 11:53:26 12 degree higher to a capital offense, there has to be another
 11:53:30 13 ingredient. There has to be an aggravating or special
 11:53:36 14 circumstance that surrounds that intentional killing. Okay?
 11:53:40 15 These are some examples of offenses that qualify
 11:53:42 16 as capital murder. In the first one, that special circumstance
 11:53:48 17 is the age of the child. Okay? The age of the child can
 11:53:52 18 aggravate or -- or pop that intentional killing up one degree if
 11:53:56 19 the child happens to be under six. Okay?
 11:54:00 20 And the second one, if you kill a police officer
 11:54:04 21 and that police officer or fireman is acting in their course of
 11:54:06 22 their duty, they are on duty, the fact that they are on duty
 11:54:12 23 when they were killed in the capacity of their profession bumps
 11:54:14 24 them up to a capital offense. Okay?
 11:54:16 25 A. Okay.

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11:54:16 1 Q. If you intentionally kill someone and you're
 11:54:20 2 committing some other type of felony, and there is some specific
 11:54:24 3 felonies that are listed and those are just a couple of them,
 11:54:26 4 that bumps it up to a capital offense and an example of that
 11:54:30 5 might be a convenience store robbery or a bank robbery. Say you
 11:54:36 6 go into rob a bank or a convenience store, and you shoot the
 11:54:38 7 teller. You shoot someone on your way out the door, whatever.
 11:54:42 8 Okay?
 11:54:44 9 The case that we are talking about involves this
 11:54:46 10 last type of capital murder and that is where you intentionally
 11:54:50 11 kill one person and then you intentionally kill at least another
 11:54:56 12 person and maybe more. Okay? So if you kill two people -- at
 11:55:00 13 least two people during the same criminal transaction or the
 11:55:02 14 same course of criminal conduct, you get bumped up to a capital.
 11:55:08 15 Does that make sense to you?
 11:55:10 16 A. Yes, ma'am.
 11:55:10 17 Q. Do you think that these are the types of offenses for
 11:55:12 18 which a person should possibly face the death penalty?
 11:55:18 19 A. Yes, ma'am.
 11:55:18 20 Q. Okay. In a capital murder case, the state has to
 11:55:26 21 prove certain things beyond a reasonable doubt. We have to
 11:55:30 22 prove that the person on trial, the person in fact sitting in
 11:55:34 23 the room, which in this case is Mr. Crutsinger, in Tarrant
 11:55:38 24 County, Texas, on or about a particular date, intentionally
 11:55:42 25 caused the death of more than one person and then we have to
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11:55:46 1 prove how that person accomplished it, whether it was by
 11:55:50 2 shooting, stabbing, drowning, strangling, whatever. Okay?
 11:55:56 3 These are the only things that we have to prove beyond a
 11:56:00 4 reasonable doubt.
 11:56:02 5 A couple of things I want to discuss with you.
 11:56:04 6 When we talk about intentionally, we are talking about something
 11:56:08 7 that someone intends to do. Okay? It's their conscious
 11:56:12 8 objective or desire. It's not an accident. It's not
 11:56:16 9 negligence. It's not insanity. It's not self-defense. Okay?
 11:56:22 10 They want to do the act and they, in fact, do the act. Make
 11:56:28 11 sense to you?
 11:56:28 12 A. Yes, ma'am.
 11:56:28 13 Q. Two things that you don't see up here that we often
 11:56:32 14 hear about on TV, the state doesn't have to prove premeditation.
 11:56:38 15 Do you know what that means?
 11:56:40 16 A. Planned ahead of time.
 11:56:42 17 Q. Pardon me?
 11:56:42 18 A. Planned ahead of time.
 11:56:44 19 Q. Correct, absolutely correct. We are not required to
 11:56:46 20 prove that that person intended to kill and an individual 15
 11:56:52 21 minutes ahead of time, three hours ahead of time, three days,
 11:56:56 22 three months, a year. All we have to prove is that they had
 11:57:00 23 that conscious objective or desire. They had that intent in
 11:57:04 24 their mind, and then they acted on it. Okay?
 11:57:06 25 A. Okay.

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11:57:06 1 Q. Do you think that it is possible for people to form
11:57:08 2 the intent and act on it immediately?

11:57:12 3 A. Yes, ma'am.

11:57:12 4 Q. Without sitting around and thinking about it for an
11:57:16 5 hour or 20 minutes?

11:57:18 6 A. Like, at some point in time, they have had to have
11:57:20 7 thought about it.

11:57:22 8 Q. Okay. Do you think it's possible for people to think
11:57:24 9 about it and then immediately act upon their -- their intent or
11:57:28 10 their thought?

11:57:30 11 A. Say, in a fit of rage or something.

11:57:32 12 Q. Okay.

11:57:34 13 MR. RAY: I'm sorry. I didn't hear your answer.

11:57:36 14 VENIREPERSON REASONER: In a fit of rage or
11:57:38 15 intent, they could act on it.

11:57:40 16 Q. (By Ms. Hartman) Okay. Do you think that there may
11:57:44 17 be circumstances where someone, because of the circumstances
11:57:48 18 falling the way that they do, they form the intent, and then
11:57:50 19 it's convenient to act upon that intent right then and there?

11:57:56 20 A. I'm not real sure I understand.

11:57:58 21 Q. Okay. Let me throw out a hypothetical, and any
11:58:02 22 examples that I give you or the defense gives you don't have
11:58:04 23 anything to do with this particular case. We can't tell you
11:58:08 24 what those facts are. All right?

11:58:12 25 Let's say that -- let's see. Let's say that I'm
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11:58:24 1 going to commit a robbery of a convenience store, and my intent
11:58:30 2 when I am deciding to do this is I need some money. All right?
11:58:34 3 Need some money, this is the quick way for me to do it and don't
11:58:40 4 intend to kill anybody, all right, because I know that that
11:58:46 5 probably makes things a lot worse for me, but at this point, all
11:58:48 6 I want is the money and so I stop into the local Stop 'N Go and
11:58:54 7 I happen to have a pen knife -- not a pen knife, but like a
11:58:58 8 pocket knife in my pocket that I normally carry with me. It's
11:59:02 9 not anything I went out and got especially to go into this
11:59:06 10 convenience store, but it's something I carry with me and I go
11:59:08 11 in there and I demand the money.

11:59:14 12 The clerk doesn't want to give it to me, so I
11:59:16 13 pull out the knife, and the knife is being pulled out to
11:59:20 14 convince the clerk they need to give me the money. I mean, it's
11:59:22 15 to scare them into giving me the money, and for whatever reason,
11:59:26 16 this clerk, whether it's because something similar happened
11:59:30 17 and -- and they didn't get hurt or if they give up the money,
11:59:34 18 it's going to get taken out of their salary or what-have-you.
11:59:38 19 That clerk decides they're going to buck me. They're not going
11:59:40 20 to give me the money and I really want that money and the only
11:59:46 21 way I'm going to get it is if I hurt that clerk or I kill that
11:59:48 22 clerk. All right?

11:59:48 23 And I form that intent right then and there
11:59:50 24 after I've walked in the store. I mean, prior to that point, I
11:59:54 25 don't want to do that, okay, but at moment in time, I form the
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11:59:58 1 intent I'm going to kill this person, because I can't believe
12:00:02 2 I'm threatening them with a knife and they're not handing that
12:00:04 3 money over and that's the only way I'm going to get it and so I
12:00:08 4 kill the clerk, formed the intent and acted on it. Do you see
12:00:12 5 where that might be possible?

12:00:12 6 A. Yes, ma'am.

12:00:14 7 Q. All right. Do you think it is possible to determine
12:00:18 8 someone's intent by their behavior or their conduct without them
12:00:24 9 actually verbalizing what their intent is going to be?

12:00:28 10 A. No, ma'am.

12:00:28 11 Q. You don't think that's possible? Okay. What if I
12:00:30 12 walked up to you like this(gestures)?

12:00:34 13 A. Offer to shake your hand.

12:00:36 14 Q. Okay. I don't say a word to you, but I put my hand
12:00:38 15 out. Do you think you can infer what my intent is by my
12:00:42 16 conduct?

12:00:42 17 A. A gesture of good will.

12:00:46 18 Q. Okay. The hypothetical I used a moment ago, let's
12:00:50 19 say when I go in there and I say, Give me the money, all right,
12:00:54 20 the clerk doesn't do anything. I pull the knife out, and do
12:00:58 21 like this to the clerk(gestures). The clerk doesn't do anything
12:01:00 22 and I don't say a word, but I reach over and I stab that clerk.
12:01:04 23 Do you think it's possible to infer what my intent is by my
12:01:08 24 actions, even though I haven't verbally told the clerk, I am
12:01:12 25 going to kill you?

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12:01:14 1 A. Uh-huh, yes, ma'am.

12:01:14 2 Q. Okay. So do you see where there might be
12:01:16 3 circumstances where you could infer what someone's intent was by
12:01:20 4 what they've done, by their conduct?

12:01:28 5 A. By their actions, yes, ma'am.

12:01:30 6 Q. Okay. Do you understand what I'm saying?

12:01:30 7 A. Yes, ma'am.

12:01:32 8 Q. Okay. If you were standing here and I walk up and,
12:01:34 9 of course, actually, I ought to reverse this hypothetical where
12:01:38 10 I have the court reporter actually wanted to kill one of us a
12:01:42 11 number of times, because we get to talking too fast and that
12:01:44 12 wears her fingers out. So I'll make her the person with the
12:01:50 13 gun, but let's say you're sitting there and I'm just going 90
12:01:54 14 miles an hour and she's had it, because you're -- you're Juror
12:01:56 15 No. 95, so we've gone through all those other people. She's
12:01:58 16 been working hard and she pulls her gun out, which she can carry
12:02:04 17 under -- say she's got a permit and right in front of you -- she
12:02:08 18 doesn't say a word to me, but right in front of you, she pulls
12:02:10 19 out that gun. She walks up to me, bang, and she shoots me.
12:02:14 20 Okay? She hadn't said she's going to kill me, but do you think
12:02:18 21 from what you observed of her actions that you could infer that
12:02:22 22 her intent was to kill me by what she did?

12:02:26 23 A. Yes, ma'am.

12:02:26 24 Q. Pulling out a gun and shooting me?

12:02:28 25 A. (Venireperson nods.)

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12:02:28 1 Q. Okay. Do you understand that people may not
 12:02:32 2 verbalize what their intent is, they may just act on it?
 12:02:36 3 A. Yes, ma'am.
 12:02:36 4 Q. And so, therefore, do you think it's possible to look
 12:02:38 5 at their behavior and form an opinion or infer what that
 12:02:44 6 person's intent was by what they've done?
 12:02:48 7 A. If you've actually seen it or seen what happened?
 12:02:54 8 Q. Well, whether you've seen it happen or if you're a
 12:02:56 9 juror and you hear testimony about what has happened.
 12:03:04 10 A. If I had all of the facts, I could.
 12:03:04 11 Q. I'm sorry?
 12:03:08 12 A. If I had all the facts, I could.
 12:03:08 13 Q. Sure. If you were able to sit and listen to
 12:03:10 14 witnesses come in and talk about what they saw, what they
 12:03:14 15 observed, do you think you could form some opinions about what a
 12:03:16 16 person's intent was?
 12:03:18 17 A. Yes, ma'am.
 12:03:18 18 Q. Okay. We don't have to prove premeditation. The
 12:03:28 19 other thing that you don't see up on this list that we have to
 12:03:30 20 prove as an element is motive. Do you know what motive is the?
 12:03:34 21 A. Yes, ma'am.
 12:03:34 22 Q. And what does that mean to you?
 12:03:36 23 A. A reason for them to do it.
 12:03:36 24 Q. Right.
 12:03:36 25 A. They had some reason to do it.

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12:03:38 1 Q. Okay. And sometimes we know why people have done
 12:03:40 2 things and sometimes we never know. Okay? Have you ever seen
 12:03:44 3 things on TV that people have done and you've asked yourself,
 12:03:48 4 you know, why in the world would someone ever do X? I mean, it
 12:03:54 5 just is inconceivable to you. You can't think of any rational
 12:03:58 6 reason why somebody might do something.
 12:03:58 7 A. Yes, ma'am.
 12:04:00 8 Q. All right. Because we never -- because we don't
 12:04:06 9 always know why someone has done something, the state doesn't
 12:04:10 10 ever have to prove why someone has done it. We have to prove,
 12:04:14 11 though, that they intended to do it and, in fact, did it. Okay?
 12:04:18 12 The why might be important if it comes out in evidence later on
 12:04:22 13 in punishment, all right, but it's not something that I have to
 12:04:26 14 prove beyond a reasonable doubt for the jury to return a verdict
 12:04:28 15 of guilty. Make sense to you?
 12:04:30 16 A. Yes, ma'am.
 12:04:32 17 Q. Okay. Any questions about the elements or what I
 12:04:34 18 have to prove in a capital murder case?
 12:04:36 19 A. No, ma'am.
 12:04:36 20 Q. Okay. If the defendant is found guilty in a capital
 12:04:44 21 murder case, there are only two possible punishments, a life
 12:04:48 22 sentence and the death sentence. A death sentence is pretty
 12:04:52 23 self-explanatory. That's by lethal injection.
 12:04:56 24 A life sentence, on the other hand, is 40 years,
 12:04:58 25 day for day, before the person becomes eligible to be considered

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12:05:02 1 for parole. Okay? We don't have life without parole in the
 12:05:06 2 State of Texas. They have to do at least 40 years before they
 12:05:08 3 have a chance of coming up before the parole board.
 12:05:12 4 A. Okay.
 12:05:12 5 Q. Okay? Defendant is found guilty, you would then get
 12:05:18 6 to hear any additional evidence, okay, such as the defendant's
 12:05:20 7 good or bad character, prior criminal history or record. All
 12:05:26 8 right? If the defense wants to put evidence on, they can. They
 12:05:28 9 don't have to.

12:05:30 10 And at the conclusion of all the evidence, okay,
 12:05:34 11 all of the evidence is in. That's all the jury is going to hear
 12:05:40 12 at that point. The jury would go back to the jury room with
 12:05:42 13 these two questions I'm getting ready to go over with you. You
 12:05:46 14 would not go back there and take a vote of like, okay, who wants
 12:05:50 15 life and who wants death. It doesn't work that way.

12:05:54 16 Instead, the way you get to that result of life
 12:05:56 17 or death is by answering two questions. Okay. Clear up to
 12:06:02 18 here?

12:06:04 19 A. Yes, ma'am.
 12:06:04 20 Q. Clear up to this point?
 12:06:06 21 A. Yes, ma'am.
 12:06:08 22 Q. All right. When you get to Special Issue No. 1,
 12:06:10 23 remember, you've heard all the evidence, and you've convicted
 12:06:14 24 that person of capital murder. All right? You've heard
 12:06:16 25 additional punishment evidence, if you have, about anything else

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12:06:20 1 that's relevant to that person. Okay?
 12:06:24 2 This first question would be one that the jurors
 12:06:26 3 would have to ask themselves in considering all of the evidence.
 12:06:30 4 Do you find beyond a reasonable doubt -- and, again, the state
 12:06:34 5 has the burden of proof on this question. We have the burden to
 12:06:38 6 prove that the answer to the question should be yes, that there
 12:06:44 7 is a probability, not a certainty, okay, but a probability that
 12:06:48 8 the defendant would commit criminal acts of violence that would
 12:06:52 9 constitute a continuing threat to society. All right?

12:06:56 10 The words that are underlined, the phrases are
 12:06:58 11 not defined in law for you. Those are phrases and words that
 12:07:04 12 you, as a juror, get to define for yourself.

12:07:08 13 Do you think that it is possible to look at a
 12:07:12 14 person's crime and any past history they might have and make
 12:07:16 15 some predictions about how they will probably behave in the
 12:07:20 16 future?

12:07:20 17 A. Yes, ma'am.
 12:07:20 18 Q. All right. You think that that's a reasonable thing
 12:07:22 19 for you to be able to do?

12:07:24 20 A. Yes, ma'am.
 12:07:24 21 Q. And, again, like I said, probability is not
 12:07:28 22 certainty, because obviously if we could forecast things for
 12:07:32 23 certain, we'd all be winners of the lottery, right?

12:07:34 24 A. Yes, ma'am.
 12:07:36 25 Q. Okay. But the law anticipates that it's more than

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just a mere possibility. So it's more than a possibility, but less than a certainty and wherever in between there you think probability lies, that's up to you, fair enough?

A. Yes, ma'am.

Q. All right. Criminal acts of violence, the law lets each juror define for themselves what they think is a criminal act of violence. It can be anything from simple assault, family assault, terroristic threats, arson, all the way up to capital -- another capital murder and anything in between, kidnapping, sexual assault, robbery, anything that you think is a criminal act of violence you get to define with that phrase.

Okay?

A. Okay.

Q. Society, the law allows you to consider anybody that you want to make up a society. It can be free society, the people on the streets, the people in community. You can consider people within the penitentiary system as part of society if you so choose, not only guards and other prisoners, but anyone else who would have access to a defendant who was confined in prison, whether that's religious clergy, medical personnel, nurses and doctors, teachers, counselors, administrative staff, people that help to run the prison system and to keep it going. You can consider those people if you so choose.

The reason that the law has those questions is because the law says that not everyone who commits the offense

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of capital murder deserves the death penalty. There ought to be a way to separate people out, depending upon their circumstances, the type of offense they commit, the motivation, the background, things of that nature. Okay? If everyone who was convicted of capital murder deserved the death penalty, we wouldn't have these questions; do you see?

A. Yes, ma'am.

Q. Okay. If a person is going to sit on a capital murder case, they must come into the process being fair and open-minded to the possibility that they may hear facts that determine -- that would require them to answer the question either yes or no. In other words, we can't have people who are always going to either find the person is a future danger each and every time by virtue of the fact that they've been convicted of capital murder; and on the other hand, we can't have people who are always going to answer this question no and disregard evidence that might indicate otherwise; do you follow?

A. Yes, ma'am.

Q. Okay. Do you think this is a question that you would be able to, if you were a juror, of having an open mind and being able to answer either yes or no based upon what evidence you heard at the first phase of the trial and the second phase of the trial?

A. Yes, ma'am.

Q. Do you feel like, at this point, that you are

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inclined to answer this question one way or the other before you've heard any facts?

A. Yes, ma'am.

Q. You are inclined to answer it one way or the other?

A. To answer you one way or the other?

Q. Well, maybe -- maybe I didn't phrase my question right or you didn't understand it.

Are you -- at this point in time, you've not heard any facts about this case, and we can't tell you what the facts are.

A. Okay.

Q. Because then we would be sitting here saying, Well, what would you do? Okay? And that would be improper. Right now, as you sit here, without hearing any facts, are you inclined -- do you want to answer this question one way, either yes or no -- strike that.

Would you answer this question the same way each and every time regardless of what the evidence was?

A. No, ma'am.

Q. Okay. Are you open to answering this question yes?

A. Yes, ma'am.

Q. Are you open to the possibility of answering this question no?

A. Yes, ma'am.

Q. If I don't meet my burden of proof, if I don't prove

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to you beyond a reasonable doubt that there was a probability the defendant would continue to commit criminal acts of violence, whatever that means to you, could you answer this question no?

A. Yes, ma'am.

Q. All right. Was I confusing you earlier?

A. No, ma'am.

Q. Okay. We've been doing this -- this is what, our third week? I think this is the end of our third week. So I guess what I'm trying to find out is there are some people who would always answer this question yes, because they would say, If I've convicted someone of killing more than one person in the same course of their conduct, I'm always going to answer this question yes. I don't think care what the evidence is. There are some people who say, You know what, I'm always going to answer this question no, because I don't feel comfortable predicting how someone might -- would probably behave in the future. I'm just going to find out if you are in a camp that's going to answer always yes or always no?

A. I would be open, depending on the evidence.

Q. Okay. Very good. If the jurors unanimously -- they all agreed to answer this question yes, you would then move to Special Issue No. 2. Anything that requires a person being found guilty or moving them closer to a death sentence requires a unanimous verdict. It requires everyone in the jury room to

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12:13:16 1 agree. Okay. Make sense to you?

12:13:18 2 A. Yes, ma'am.

12:13:18 3 Q. If at least 10 or more jurors agree that the answer

12:13:22 4 to this question should be no, you would stop there after

12:13:26 5 answering that question no, because the person is going to get a

12:13:28 6 life sentence. Okay?

12:13:30 7 A. Okay.

12:13:36 8 Q. If 10 or more -- 10 or more must agree to answer that

12:13:40 9 question no before you can answer it no. Make sense to you?

12:13:44 10 A. For the -- as the group, the answer being no, 10 or

12:13:48 11 more?

12:13:48 12 Q. It has to be at least 10 or more agree to answer it

12:13:52 13 no.

12:13:52 14 A. Okay.

12:13:52 15 Q. And all 12 to answer it yes.

12:13:54 16 A. Okay.

12:13:54 17 Q. Are we clear on that?

12:13:56 18 A. Yes, ma'am.

12:13:56 19 Q. Okay. Let's assume for the sake of our discussion

12:14:00 20 this morning that the jury agrees to answer this question yes.

12:14:02 21 We believe the state has proven to us based upon either the

12:14:06 22 offense or the person's background or their criminal history if

12:14:10 23 they have any or whatever, we believe there is a probability

12:14:14 24 this person is going to be a future threat. Okay? You would

12:14:18 25 then move to the second question. Take a moment to read that

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12:14:22 1 one to yourself, if you will do that.

12:14:24 2 A. (Venireperson complies.) Okay.

12:14:38 3 Q. Okay. What do you think this question is asking you

12:14:40 4 and the other jurors?

12:14:46 5 A. Is there enough evidence for us to give him the death

12:14:50 6 penalty versus life in prison.

12:14:52 7 Q. Okay. Well, it's kind of the opposite. This

12:14:54 8 question is asking you to take a look, once again, at the

12:14:56 9 evidence that you've already looked at in Question No. 1, all

12:15:02 10 right, because you remember, at this point, you found the

12:15:04 11 defendant guilty, right?

12:15:04 12 A. Yes.

12:15:06 13 Q. And to get this to question, you've answered Special

12:15:08 14 Issue No. 1, yes, you think they are a future threat or future

12:15:12 15 danger. This question is asking you to step back and look again

12:15:16 16 at that evidence and consider it again. All right? Is there

12:15:22 17 something before the jury that you find sufficiently lessens

12:15:26 18 that person's responsibility for the offense? Okay. And let me

12:15:36 19 give you just some hypotheticals and examples that don't

12:15:40 20 necessarily have anything to do with this case. It's just to

12:15:42 21 help illustrate the point. Okay?

12:15:46 22 A. Okay.

12:15:46 23 Q. It might be that a jury sits on a case where the

12:15:48 24 person on trial that they convict is fairly young, okay, or had

12:15:58 25 a bad childhood growing up, came from a single-parent home, grew

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12:16:02 1 up very poor, has had problems with some type of mental nature.

12:16:14 2 Okay? Let me just throw in here, in the State of Texas, we

12:16:18 3 don't execute people who are mentally retarded. Okay? So we're

12:16:22 4 not talking about mental retardation when I talk about mental

12:16:24 5 issues, but there might be evidence of any degree and type that

12:16:28 6 could be presented to a jury. It is up to the individual jurors

12:16:32 7 to decide what type of evidence you personally feel might lessen

12:16:38 8 a person's responsibility for the commission of their crime,

12:16:42 9 okay; do you follow?

12:16:46 10 A. Yes, ma'am.

12:16:46 11 Q. And any one of those things or -- or anything else

12:16:48 12 that could be presented, one person might personally feel like,

12:16:54 13 well, gosh, this person is 18 years old. They're very young.

12:16:58 14 To me, that's sufficiently mitigating. Okay? Another person

12:17:04 15 sitting next to them on the jury might look at the same evidence

12:17:08 16 and say, You know what, I personally don't find that to be

12:17:10 17 mitigating. That is not sufficiently mitigating to me. All

12:17:14 18 right? You don't have to agree with the other jurors what you

12:17:18 19 think is mitigating.

12:17:20 20 This question, though, is asking you, is there

12:17:24 21 any evidence that you find to be sufficiently convincing to you

12:17:28 22 that sufficiently mitigates or lessens that person's

12:17:32 23 responsibility for their crime, whether it's evidence of the

12:17:36 24 offense, the motive for the offense, the defendant's character

12:17:40 25 and background, their personal moral culpability, whatever it

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12:17:46 1 is.

12:17:48 2 Jurors might need to ask themselves, number one,

12:17:50 3 the evidence that I have heard in this courtroom, number one, is

12:17:54 4 it credible? You ask yourself that with any evidence, right?

12:17:58 5 A. Yes, ma'am.

12:17:58 6 Q. Do I believe it, because people can claim anything?

12:18:02 7 It doesn't necessarily make it true. Do I believe the evidence?

12:18:04 8 No. 2, do I think it's mitigating? Is it something to me that

12:18:10 9 would lessen their responsibility? And No. 3, if it is

12:18:14 10 mitigating, is it of a sufficient quality or quantity that I

12:18:18 11 think this person deserves a life sentence over a death

12:18:22 12 sentence; do you follow?

12:18:24 13 A. Yes, ma'am.

12:18:26 14 Q. All right. The law anticipates that jurors have to

12:18:30 15 keep an open mind to the realistic possibility that they might

12:18:34 16 hear something that they think is sufficiently mitigating, and

12:18:38 17 if they do hear something that they think is sufficiently

12:18:40 18 mitigating, they would have to follow the law and answer this

12:18:44 19 question yes. Yes, I do find that a life sentence is deserved

12:18:48 20 over a death sentence, because of this particular factor that I

12:18:50 21 have heard in this case. Make sense to you?

12:18:54 22 A. Yes, ma'am.

12:18:54 23 Q. Okay. Do you think that's a fair way to go about it?

12:19:06 24 A. Yes, ma'am.

12:19:06 25 Q. Okay. And you don't have to agree with me if you

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12:19:10 1 don't want to. I'm just -- I'm asking you, do you think it's
 12:19:14 2 fair that the law asks the jury to step back and see if there is
 12:19:18 3 any particular piece of evidence that makes this person maybe
 12:19:20 4 more deserving of a life sentence than a death sentence.
 12:19:24 5 A. Yes, ma'am.
 12:19:24 6 Q. It might be something unique; it might be something
 12:19:26 7 that sets them apart. Do you think that the possibility is out
 12:19:30 8 there? And I can't ask you -- the defense can't ask you what
 12:19:34 9 you think would be a sufficiently mitigating circumstance.
 12:19:36 10 Okay? We can't ask you that. What I am going to ask you is:
 12:19:42 11 Do you think that there is a possibility that there is evidence
 12:19:44 12 out there that you personally might feel would be sufficiently
 12:19:48 13 mitigating --
 12:19:48 14 A. Yes, ma'am.
 12:19:50 15 Q. -- such that you could answer this question yes?
 12:19:52 16 A. Yes, ma'am.
 12:19:52 17 Q. Okay. By the same token, do you think that you
 12:20:00 18 could, if you didn't hear any evidence that you found to be
 12:20:02 19 sufficiently mitigating -- I mean, whatever that evidence was,
 12:20:06 20 could you answer this question no --
 12:20:08 21 A. Yes, ma'am.
 12:20:08 22 Q. -- I don't find there to be sufficiently mitigating
 12:20:12 23 circumstances?
 12:20:12 24 A. Yes, ma'am.
 12:20:14 25 Q. With the understanding that if all 12 of you agree to
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12:20:16 1 answer that question no, that leads you to the court or that
 12:20:20 2 leads the court to having to impose a death sentence?
 12:20:24 3 A. Yes, ma'am.
 12:20:24 4 Q. If it at least 10 or more agree to answer that
 12:20:28 5 question yes, then what happens?
 12:20:30 6 A. Life sentence.
 12:20:32 7 Q. Exactly. Okay. Something else that I don't want to
 12:20:38 8 forget to mention. On the -- at the first phase of the trial
 12:20:42 9 and on that first special issue, the state has the burden of
 12:20:44 10 proof. We have to prove those things.
 12:20:46 11 A. Uh-huh.
 12:20:48 12 Q. The state on this question does not have to prove
 12:20:50 13 that there are mitigating circumstances, and we don't have to
 12:20:54 14 prove that there aren't mitigating circumstances. In other
 12:20:56 15 words, we don't have to do any proving at all. All right? Does
 12:21:00 16 that make sense to you?
 12:21:00 17 A. Yes, ma'am.
 12:21:02 18 Q. Okay. And, of course, the defense never has to prove
 12:21:04 19 anything at any time. Okay?
 12:21:10 20 So correct me if I'm wrong, but what I'm hearing
 12:21:14 21 from you is you are open to the possibility of answering this
 12:21:16 22 question either yes or no, based upon what evidence is presented
 12:21:20 23 to you?
 12:21:22 24 A. Yes, ma'am.
 12:21:22 25 Q. Okay. Are you the type of person that would say,
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12:21:28 1 Well, I've convicted someone of capital murder. I've found that
 12:21:34 2 they are a future danger. There is never going to be anything
 12:21:38 3 sufficiently mitigating such that a person deserves life, and so
 12:21:40 4 I'm always going answer this question no? Are you that type of
 12:21:44 5 person?
 12:21:44 6 A. No, ma'am.
 12:21:44 7 Q. Okay. Are you the type of person, though, that would
 12:21:48 8 say, I've found someone guilty. I've found that they are a
 12:21:52 9 future danger, but you know what, if I answer that question no,
 12:21:56 10 that person is going to be put the death and I don't want to be
 12:22:00 11 a part of that. So I'm going to say yes each and every time to
 12:22:04 12 make sure that a life sentence is always imposed. Are you that
 12:22:06 13 type of person?
 12:22:08 14 A. No, ma'am.
 12:22:08 15 Q. Okay. You have lived in Texas for --
 12:22:16 16 A. All my life.
 12:22:16 17 Q. -- a fairly significant period of time, and you know
 12:22:20 18 that in this state, that the death penalty is an actual reality,
 12:22:26 19 that people on death row get executed --
 12:22:30 20 A. Yes, ma'am.
 12:22:30 21 Q. -- every year? In fact, I think I heard on the radio
 12:22:32 22 the other day that Texas had just executed its 21st death row
 12:22:38 23 prisoner for the year. So, I mean, it happens. If a jury
 12:22:44 24 answers these questions in such a way that the court imposes a
 12:22:46 25 death sentence, at some point down the line, the person is going
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12:22:52 1 to get executed.
 12:22:54 2 Do you feel like you could personally
 12:22:56 3 participate in a decision that could eventually result in a
 12:23:00 4 person that you've been in the courtroom with being put to
 12:23:06 5 death, if it was the appropriate to thing to do?
 12:23:08 6 A. Depending on the evidence, yes, ma'am.
 12:23:16 7 Q. Okay. And we ask that, because there are some people
 12:23:18 8 who, you know, agree with the law. They want to see the capital
 12:23:22 9 punishment scheme on the books, but they personally cannot be a
 12:23:26 10 part of making that decision.
 12:23:28 11 A. Unfortunately.
 12:23:28 12 Q. And I'm just trying to find out if you can actually
 12:23:32 13 be a participant and follow through if that is the appropriate
 12:23:36 14 thing that needs to happen?
 12:23:38 15 A. Yes, ma'am.
 12:23:38 16 Q. Okay. Well, obviously, with the understanding that
 12:23:42 17 it's never a pleasant decision or a pleasant position to be put
 12:23:44 18 in.
 12:23:46 19 A. No, ma'am.
 12:23:46 20 Q. I mean, we understand that. But I guess we need to
 12:23:50 21 make sure that when push comes to shove, if you answer these
 12:23:52 22 questions honestly and according to the law and a death sentence
 12:23:58 23 is going to be the result, can you participate in that decision?
 12:24:02 24 A. Yes, ma'am.
 12:24:02 25 Q. Okay. All right. Any questions about anything that
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12:24:08 1 we've gone over thus far?
 12:24:08 2 A. No, ma'am.
 12:24:10 3 Q. All right. Voluntary intoxication is not a defense
 12:24:16 4 to the commission of a crime. That means that if a person goes
 12:24:20 5 out and gets drunk or gets high, they can't be found not guilty
 12:24:24 6 by virtue of the fact that they were drunk or high. Make sense
 12:24:28 7 to you?
 12:24:28 8 A. Yes, ma'am.
 12:24:28 9 Q. Can you follow that law?
 12:24:30 10 A. Uh-huh.
 12:24:30 11 Q. Is that yes?
 12:24:32 12 A. Yes, ma'am.
 12:24:32 13 Q. Okay. Another area of the law has to do with the
 12:24:38 14 rules that apply when a police officer or law enforcement make
 12:24:44 15 an arrest or take a statement from somebody. If the evidence is
 12:24:48 16 presented to the jury that the rules have not been followed in
 12:24:54 17 some way, the jury might get an instruction from the judge that
 12:24:58 18 if they believe that the rules had not been followed, that the
 12:25:02 19 evidence was obtained illegally, okay, that they would have to
 12:25:06 20 disregard that particular piece of evidence and pull it out of
 12:25:10 21 their consideration. Okay. Are you aware of that?
 12:25:14 22 A. Yes, ma'am.
 12:25:18 23 Q. Did that ever come up in your prior trial that you
 12:25:20 24 sat on?
 12:25:22 25 A. No, ma'am.

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12:26:46 1 was, you took an oath as a juror to follow the law and part of
 12:26:52 2 that law given to you by the court was that if you believe that
 12:26:56 3 it had been illegally obtained, you would have to disregard it,
 12:27:00 4 would you violate your oath and still consider the evidence, or
 12:27:04 5 would you follow your oath and pull it out of your
 12:27:06 6 consideration, knowing it was there, but, I mean, if you had
 12:27:10 7 taken on oath, could you follow your oath, or would you violate
 12:27:14 8 it?
 12:27:14 9 A. I would probably violate it.
 12:27:16 10 MR. MOORE: We challenge him for cause at this
 12:27:18 11 time, Judge.
 12:27:20 12 THE COURT: Your challenge for cause would be
 12:27:20 13 granted.
 12:27:22 14 MS. HARTMAN: All right.
 12:27:22 15 THE COURT: Mr. Reasoner, thank you very much.
 12:27:26 16 You're going to be able to make your closing, because you won't
 12:27:28 17 be a juror on this case, and we appreciate your honesty in your
 12:27:32 18 answers.
 12:27:32 19 VENIREPERSON REASONER: Okay.
 12:27:34 20 MS. HARTMAN: Thank you.
 12:27:34 21 (Venireperson Reasoner leaves the proceedings.)
 13:46:26 22 (Off-the-record discussion.)
 13:46:26 23 THE COURT: I guess we're ready for Mr. Moretz.
 13:46:26 24 (Venireperson Moretz enters the proceedings.)
 13:46:52 25 THE COURT: Mr. Moretz, right up here, please.

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12:25:22 1 Q. Okay. But you've heard about this type of procedure
 12:25:26 2 in the law before?
 12:25:28 3 A. Yes, ma'am.
 12:25:30 4 Q. All right. There are certain rules in regards to,
 12:25:38 5 say, the taking of a statement. A person has to be warned of
 12:25:40 6 their Miranda rights. The statement has to be voluntary. All
 12:25:44 7 right? The person has to want to talk to law enforcement. They
 12:25:48 8 have to be cooperative. Okay? They can't be promised anything
 12:25:52 9 or threatened in any way. All right? Those are all things that
 12:25:56 10 go towards whether the statement is voluntary or not. Make
 12:26:00 11 sense to you?
 12:26:00 12 A. Yes, ma'am.
 12:26:02 13 Q. Okay. If evidence is presented that the rules
 12:26:08 14 haven't been followed and the court gave that instruction, the
 12:26:12 15 jury would have to ask themselves, number one, do I believe the
 12:26:16 16 rules were, in fact, not followed, because it's like any other
 12:26:20 17 type of evidence, do you believe it. Okay?
 12:26:24 18 If you believe the rules had not been followed,
 12:26:26 19 you would have to disregard the evidence. Okay? And it might
 12:26:30 20 result in a guilty verdict, and it might result in a not guilty
 12:26:34 21 verdict. How do you feel about that?
 12:26:38 22 A. Having already seen the evidence?
 12:26:38 23 Q. That's correct?
 12:26:40 24 A. I probably couldn't disregard it all the way.
 12:26:44 25 Q. Okay. If you took an oath that that was what the law

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13:46:54 1 Am I pronouncing that right? Is it Moretz?
 13:46:58 2 VENIREPERSON MORETZ: Yes.
 13:46:58 3 THE COURT: Have a seat. That chair doesn't
 13:47:00 4 move backwards or forwards, but it swivels, so you'll have to
 13:47:04 5 actually -- yeah, sometimes that mic comes off.
 13:47:08 6 Okay. Mr. Moretz, let me begin by introducing
 13:47:12 7 myself. My name is David Richards, and I'm a visiting judge
 13:47:16 8 here in Fort Worth. Judge Bob Gill is the elected judge of this
 13:47:18 9 court, and he will be conducting the trial of this case. I'm
 13:47:22 10 just here to help him with the jury selection process.
 13:47:26 11 VENIREPERSON MORETZ: Okay.
 13:47:30 12 THE COURT: Let me begin by telling you what it
 13:47:32 13 is we're here for. This is a jury selection in a capital murder
 13:47:36 14 case in which the state is seeking the death penalty. Were you
 13:47:38 15 aware of that from your questionnaire that you filled out?
 13:47:38 16 VENIREPERSON MORETZ: Yes.
 13:47:44 17 THE COURT: Okay. Unlike the typical jury
 13:47:46 18 trial -- I'm not sure whether you've been involved in that or
 13:47:48 19 not -- in a regular trial, we would bring all of the prospective
 13:47:54 20 jurors in at one time and talk to them as a group, but in a
 13:47:58 21 capital murder case where the state is seeking the death
 13:48:02 22 penalty, the potential consequences are so serious that we do it
 13:48:08 23 one at a time. So everybody that was down there with you in the
 13:48:10 24 central jury room on this case is being interviewed one at a
 13:48:12 25 time. That's why we're here. I know it can seem to be a little

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13:48:16 1 bit intimidating coming in to a group of lawyers and a robe
13:48:20 2 looking down on you in the witness stand, but this really isn't
13:48:24 3 a formal procedure. It's rather informal, and the only thing we
13:48:28 4 expect of you is just to be honest in your answers and tell the
13:48:34 5 truth.

13:48:34 6 The attorneys are going to explain a little bit
13:48:36 7 about the law in death penalty cases in Texas and then question
13:48:42 8 you about whether or not you believe you could follow that law,
13:48:46 9 but the ultimate goal is determining whether or not you would
13:48:50 10 make a fair and impartial juror in this particular type of case.
13:48:52 11 Okay?

13:48:54 12 A couple of ground rules, you may have noticed
13:48:58 13 that the court reporter in front of you is taking down
13:49:00 14 everything that I say. She's going to need to take down
13:49:02 15 everything you say and the lawyers say, as well. So try to make
13:49:06 16 your answers audible. She can't take down a nodding or shaking
13:49:10 17 of the head.

13:49:10 18 VENIREPERSON MORETZ: Right.

13:49:12 19 THE COURT: Try to avoid the uh-huh and huh-uh
13:49:14 20 answers, because that's very difficult to read if someone wants
13:49:18 21 to read back. Also, try to avoid talking over the questions,
13:49:22 22 and by that, I mean, it's normal for me, at least, in daily
13:49:26 23 conversation, if somebody is asking me a question and I know
13:49:30 24 what they're -- how they're going to end the question before
13:49:32 25 they get to the end of the question, I'll go ahead and volunteer
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13:49:36 1 an answer. Try to avoid doing that for a couple of reasons.
13:49:42 2 Number one, the court reporter can't take down two people
13:49:44 3 talking at the same time.

13:49:44 4 VENIREPERSON MORETZ: Right.

13:49:46 5 THE COURT: And for another thing, it would just
13:49:48 6 be more clear if you would let them finish their question and
13:49:52 7 take a one-second pause or so and then answer the question that
13:49:54 8 they ask.

13:49:58 9 The attorneys that are going to be asking the
13:50:00 10 questions today are going to be the same attorneys that are
13:50:02 11 going to be prosecuting and defending this case, so let me begin
13:50:06 12 by introducing them.

13:50:08 13 Tim Curry is the elected District Attorney in
13:50:12 14 Tarrant County, but that's more of an administrative position
13:50:16 15 and he's represented in the trial courts by assistant criminal
13:50:18 16 district attorneys and today we have two of his assistants,
13:50:18 17 Ms. Michele Hartman --

13:50:22 18 MS. HARTMAN: Good afternoon.

13:50:22 19 THE COURT: -- and Ms. Lisa Callaghan.

13:50:26 20 MS. CALLAGHAN: Good afternoon.

13:50:26 21 MR. REASONER: And at the other table, Mr. Tim
13:50:28 22 Moore --

13:50:28 23 MR. MOORE: Hi.

13:50:30 24 THE COURT: -- and Mr. Bill Ray.

13:50:30 25 MR. RAY: How are you doing?

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13:50:32 1 THE COURT: They are the Fort Worth criminal
13:50:32 2 defense attorneys, and they are representing Billy Jack
13:50:36 3 Crutsinger, who is at the far end of the table and who is on
13:50:40 4 trial in this case, and you can see his name up there on the
13:50:42 5 screen.

13:50:46 6 They're not going to be able to talk to you much
13:50:48 7 about the facts of the case. You're not going to come out of
13:50:52 8 here being educated --

13:50:52 9 VENIREPERSON MORETZ: Right.

13:50:54 10 THE COURT: -- on what it is, you know, the
13:50:54 11 time, place and manner that the allegations indicate occurred.
13:51:02 12 You're not going to hear an opening statement from the
13:51:04 13 prosecutor. You may hear a little bit about what it is that the
13:51:08 14 state expects to prove in this case, because they're going to
13:51:12 15 discuss the elements of the charged offense with you, but you're
13:51:16 16 not going to get a test at end of this as to whether or not
13:51:20 17 you're going to be a fair and impartial juror. All we want is
13:51:22 18 your honest opinions about the matters that they discuss with
13:51:26 19 you and then, ultimately, the attorneys and not me will decide
13:51:32 20 whether or not you will be on the case as a juror. Okay?

13:51:36 21 VENIREPERSON MORETZ: Okay.

13:51:38 22 THE COURT: Let's see if I've gone over
13:51:38 23 everything here.

13:51:40 24 VENIREPERSON MORETZ: I need to ask a question
13:51:40 25 When does this trial begin?

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13:51:44 1 THE COURT: Okay. The attorneys will go into
13:51:46 2 that, but we expect that it will begin on the 20 -- the week of
13:51:50 3 the 22nd. Is that going to be a problem for you?

13:51:52 4 VENIREPERSON MORETZ: Yes, it is. I'm going to
13:51:56 5 be leaving town Monday for three weeks.

13:51:58 6 THE COURT: Your leaving town on the 15th?

13:52:02 7 VENIREPERSON MORETZ: Yes.

13:52:02 8 THE COURT: And you're going to be gone for
13:52:04 9 three weeks?

13:52:08 10 VENIREPERSON MORETZ: After that and into
13:52:08 11 October, yes.

13:52:10 12 THE COURT: Okay. And is that a vacation or a
13:52:10 13 business trip?

13:52:12 14 VENIREPERSON MORETZ: Well, my wife's class
13:52:14 15 reunion, and my mother is sick. We have to go see her for a
13:52:18 16 while.

13:52:18 17 THE COURT: And where does she live?

13:52:20 18 VENIREPERSON MORETZ: In Tennessee, Mounta
13:52:22 19 City. She's in a nursing home right now, and she fell again.

13:52:26 20 THE COURT: Okay. I tell you what. I'm about
13:52:28 21 to turn things over to the attorneys, and that's going to be the
13:52:32 22 first thing that they're going to go over with you.

13:52:32 23 VENIREPERSON MORETZ: All right.

13:52:34 24 THE COURT: If we can't get past that, then we
13:52:38 25 can't get past that, so -- but let me begin by giving you an

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13:52:40 1 oath that's required of all prospective jurors, and if you
 13:52:46 2 would, just raise your right hand.
 3 GLENN ROBERT MORETZ,
 4 having been duly sworn to make true answers to such questions as
 5 may be propounded by the Court or under its direction, touching
 6 upon his service and qualification as a juror, gave answers as
 7 follows:

13:52:58 8 THE COURT: Okay. Very well.
 13:53:00 9 And as I said, I expect that has been the
 13:53:02 10 routine, that the first matter that's covered is your
 13:53:06 11 availability for trial.

13:53:08 12 So, Ms. Callaghan, you may proceed.
 13:53:10 13 MS. CALLAGHAN: Thank you, Your Honor.
 13:53:10 14 VOIR DIRE EXAMINATION

13:53:12 15 BY MS. CALLAGHAN:
 13:53:12 16 Q. Mr. Moretz, my name is Lisa Callaghan, as the judge
 13:53:16 17 mentioned, and Michele Hartman will be back here in a minute.
 13:53:20 18 We represent the State of Texas in this case in which the
 13:53:22 19 state -- yeah, it's a capital murder case in which the state is
 13:53:26 20 seeking the death penalty. Okay?

13:53:28 21 A. Yes.
 13:53:28 22 Q. And what we're here to do today is to go over some of
 13:53:32 23 the law and talk to you about it and find out if you can follow
 13:53:36 24 the law and, also, to find out if you have any personal
 13:53:38 25 experiences that might affect you in being a juror. Okay?
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13:53:42 1 A. Yes.
 13:53:42 2 Q. But before we go into that, let's go back to the item
 13:53:44 3 that you mentioned to the judge. You are going to be going out
 13:53:48 4 of town the 15th, you said?
 13:53:50 5 A. Yes, ma'am.
 13:53:52 6 Q. To return when?
 13:53:54 7 A. October -- around the 1st of October.
 13:53:54 8 Q. Okay. And are you driving or going by --
 13:53:58 9 A. Driving.
 13:53:58 10 Q. Driving. Okay. And this is because you said, I
 13:54:02 11 believe, your mother-in-law is ill?
 13:54:04 12 A. My mother.
 13:54:04 13 Q. Your mother is ill?
 13:54:06 14 A. My -- and my wife's class reunion.
 13:54:10 15 Q. Okay. So it's really two reasons?
 13:54:12 16 A. Yes.
 13:54:14 17 Q. I don't mean in any way to be too personal, but I
 13:54:16 18 need to ask you about this. What kind of physical problems does
 13:54:20 19 your mother have?
 13:54:22 20 A. She -- she's 97 and she broke a hip two years ago and
 13:54:26 21 she fell again this -- just a couple of weeks ago and someone
 13:54:32 22 has to be there with her and we're taking turns. The children
 13:54:36 23 are taking turns staying there to --
 13:54:40 24 Q. Okay. And it's your turn to take care of her?
 13:54:40 25 A. Yes.

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13:54:42 1 Q. Is she bedridden?
 13:54:44 2 A. She is -- she's getting around a little better, but
 13:54:48 3 she is in a wheelchair right now.
 13:54:48 4 Q. Okay. If you were required to remain here and be on
 13:54:56 5 our jury instead of going with your wife, would your concern and
 13:55:02 6 worry for your mother be to such a degree that you would be
 13:55:06 7 incapable of focusing on the evidence in this case and
 13:55:10 8 deliberating on it fairly?
 13:55:12 9 A. Well, my wife cannot drive by herself, so that would
 13:55:16 10 be out.
 13:55:18 11 Q. I see. Okay. So you -- neither of you could go in
 13:55:22 12 in the event that you were instructed to be a juror?
 13:55:28 13 A. Right.
 13:55:28 14 Q. Well, then let me ask again. Would the situation
 13:55:32 15 with your mother be to such a degree that you could not give
 13:55:34 16 your full attention to the case and focus on it?
 13:55:38 17 A. I believe it would be. It would be.
 13:55:44 18 MS. CALLAGHAN: One moment, please, Your Hon.
 13:56:02 19 The state will agree, Your Honor.
 13:56:06 20 MR. MOORE: We'll agree.
 13:56:08 21 THE COURT: Mr. Moretz, thank you for coming. I
 13:56:10 22 wish you the best of luck in your travels.
 13:56:14 23 VENIREPERSON MORETZ: Thank you.
 13:56:14 24 MS. CALLAGHAN: Thank you very much. We Wis
 13:56:16 25 your mother well. Good luck.
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13:56:14 1 VENIREPERSON MORETZ: All right. Thank you.
 13:56:24 2 Sorry I couldn't help you.
 13:56:24 3 MS. CALLAGHAN: No, that's quite all right.
 13:56:26 4 Thank you.
 13:56:26 5 (Venireperson Moretz leaves the proceedings.)
 13:56:26 6 (Off-the-record discussion.)
 13:56:04 7 (Venireperson Hitte enters the proceedings.)
 13:56:04 8 THE COURT: Okay. Mr. -- is it Hitte or Hitte?
 13:56:08 9 VENIREPERSON HITTE: Hitte, sir.
 13:56:08 10 THE COURT: Come right up here, please, this
 13:56:10 11 chair right here. That chair doesn't move backwards or
 13:56:16 12 forwards, so kind of swivel into it and then keep that
 13:56:24 13 microphone up kind of towards your face.
 13:56:26 14 Okay. Mr. Hitte, I'll begin by introducing
 13:56:30 15 myself. My name is David Richards, and I'm a visiting judge
 13:56:32 16 here in Fort Worth. I'm assisting Judge Bob Gill, who is the
 13:56:36 17 elected judge, to pick a jury, but Judge Gill is going to be
 13:56:40 18 presiding at the trial of this case.
 13:56:44 19 As you may have surmised from all of the
 13:56:46 20 information you were provided in the central jury room, this is
 13:56:50 21 a case, a capital murder case in which the state is seeking the
 13:56:52 22 death penalty, and the attorney attorneys are going to go over
 13:56:58 23 with you the scheduling. I appreciate you coming in this
 13:57:02 24 afternoon. I understand that there has been a death in your
 13:57:06 25 family?

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15:07:06 1 VENIREPERSON HITTE: Yes, sir.
 15:07:06 2 THE COURT: I appreciate your patience, and
 15:07:08 3 you're leaving tomorrow?
 15:07:08 4 VENIREPERSON HITTE: Yes, sir.
 15:07:10 5 THE COURT: The attorneys will go over the trial
 15:07:14 6 schedule to determine whether or not you have a potential
 15:07:16 7 conflict there, as well, but I'll let them get into that.
 15:07:20 8 Let me tell you a little bit about we're going
 15:07:24 9 to do this afternoon. We're bringing all of the prospective
 15:07:26 10 jurors in this case in one at a time and we only do that in
 15:07:30 11 capital murder capital cases where the state is seeking the
 15:07:32 12 death penalty, because of the potential serious consequences of
 15:07:38 13 the verdict, we like to bring what we call the veniremembers in
 15:07:44 14 one at a time for the process we call voir dire here. I don't
 15:07:48 15 know if you have been a juror before.
 15:07:48 16 VENIREPERSON HITTE: No, sir.
 15:07:50 17 THE COURT: But this is the portion of the trial
 15:07:52 18 you never see on television or the movies. This is the part
 15:07:56 19 when the attorneys have a chance to ask you some questions,
 15:08:02 20 explain the law to you and find out if -- if you're able to
 15:08:06 21 follow the law in this type of case, if you are, in fact,
 15:08:10 22 selected as a juror. They are trying to determine whether you
 15:08:12 23 are a fair and impartial juror in this case. It may be that you
 15:08:16 24 would be a fair and impartial juror in another type of case, but
 15:08:20 25 for some reason there is something that would prevent you from
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15:08:24 1 doing it in this case.
 15:08:26 2 So let me begin by introducing the attorneys
 15:08:30 3 that are here this afternoon. Tim Curry is the elected District
 15:08:34 4 Attorney, but that's an administrative-type position and he's
 15:08:38 5 represented in the trial courts by assistant district attorneys
 15:08:42 6 and we have two of his assistants who are present here this
 15:08:46 7 afternoon and they will be prosecuting the case at the time it
 15:08:48 8 goes to trial, Ms. Michele Hartman --
 15:08:52 9 MS. HARTMAN: Good afternoon.
 15:08:52 10 THE COURT: -- and Ms. Lisa Callaghan.
 15:08:54 11 MS. CALLAGHAN: Good afternoon.
 15:08:56 12 THE COURT: And on the other side, the defense
 15:08:58 13 side, Mr. Tim Moore --
 15:08:58 14 MR. MOORE: Hi.
 15:08:58 15 THE COURT: -- and Mr. Bill Ray.
 15:09:00 16 MR. RAY: How are you doing?
 15:09:00 17 THE COURT: Mr. Moore and Mr. Ray are Fort Worth
 15:09:04 18 criminal defense attorneys. The defendant in this case is
 15:09:06 19 Mr. Billy Jack Crutsinger. That's him over there on the end,
 15:09:10 20 and that is his name up there on the screen.
 15:09:14 21 The attorneys are going to have a chance to talk
 15:09:16 22 to you this afternoon. If you have any questions of them
 15:09:18 23 about -- about anything related to this case, just feel free to
 15:09:24 24 speak up. I know it's a little intimidating when you walk in
 15:09:28 25 and see the lawyers and I am looking down at you in a robe, but
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15:09:32 1 it's a really informal process we go through. So feel free to
 15:09:36 2 speak up. If you have any questions of them or if you have --
 15:09:40 3 or you don't understand a question that they have of you, you
 15:09:44 4 have at it, okay, and just feel free to speak up.
 15:09:48 5 A couple of ground rules. The court reporter
 15:09:50 6 right in front of you, you may have noticed, is taking down
 15:09:52 7 everything that I say. She's required to take down everything
 15:09:58 8 that anyone says in the courtroom, including you. So as a
 15:10:00 9 consequence, when they begin asking you questions, try to avoid
 15:10:04 10 nodding of the head and shaking of the head and answer audibly,
 15:10:08 11 because we need that for the record, yes or no, rather than
 15:10:10 12 uh-huh and huh-uh. That will help us, too, because that's
 15:10:14 13 really difficult to read, if somebody is having to read the
 15:10:18 14 record.
 15:10:18 15 VENIREPERSON HITTE: (Venireperson nods.)
 15:10:20 16 THE COURT: Also, don't talk over the questions,
 15:10:20 17 and by that, I mean, typically in normal conversation, a lot of
 15:10:24 18 times you're going to be able to anticipate what the end of the
 15:10:28 19 question is going to be that they ask. Okay? And if you're
 15:10:32 20 just conversing with somebody and you know that's going to
 15:10:34 21 happen and if you blurt out the answer even before they finish
 15:10:40 22 the question, try to avoid that here in this courtroom. If
 15:10:40 23 after they begin asking you a question, even if you know where
 15:10:44 24 they are going with it, go ahead and let them get the whole
 15:10:48 25 question out, take about a half-second pause, and then give the
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15:10:50 1 answer. Among other things, the court reporter can't take down
 15:10:54 2 two people talking at the same time. Okay? So we need to have
 15:10:58 3 only one person in the courtroom talking at one time.
 15:11:00 4 As I said, the attorneys are going to talk with
 15:11:02 5 you about the law in this case, and to determine whether or not
 15:11:04 6 you would be a fair and impartial juror. Don't expect them to
 15:11:08 7 discuss the facts of the case with you. Don't expect them to
 15:11:14 8 tell you the who, what, where and why and what they expect the
 15:11:20 9 evidence to show. They're mainly going to be talking in
 15:11:22 10 hypothetical fact situations about the law and explain what the
 15:11:26 11 law is to you. You'll know a little bit about what they expect
 15:11:30 12 to prove at trial, but don't expect to come away -- this isn't
 15:11:34 13 the time when they are making an opening statement as to what
 15:11:38 14 think the evidence is going to prove. Okay?
 15:11:38 15 VENIREPERSON HITTE: I understand.
 15:11:40 16 THE COURT: Okay. There is an oath that I need
 15:11:42 17 to give to all prospective jurors, so if you would raise your
 15:11:46 18 right hand.
 15:11:46 19 DAVID MICHAEL HITTE,
 15:11:46 20 having been duly sworn to make true answers to such questions as
 15:11:46 21 may be propounded by the Court or under its direction, touching
 15:11:46 22 upon his service and qualification as a juror, gave answers as
 15:11:46 23 follows:
 15:11:56 24 VENIREPERSON HITTE: I do.
 15:11:58 25 THE COURT: Okay. Very good.
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15:12:00 1 Okay. We'll begin with the DA's office asking
 15:12:02 2 you some questions, and when they're done, then the defense will
 15:12:04 3 have an opportunity to question you. Okay?
 15:12:04 4 VENIREPERSON HITTE: Yes, sir.
 15:12:08 5 THE COURT: We're not looking for -- you know,
 15:12:10 6 there is no right or wrong answer here. You won't be given a
 15:12:16 7 test over the law that you learn. So the important thing is
 15:12:18 8 just to be honest and open about your feelings about the law
 15:12:24 9 when the question calls for that.
 15:12:24 10 You may proceed.
 15:12:26 11 MS. HARTMAN: Thank you, Your Honor.
 15:12:26 12 VOIR DIRE EXAMINATION
 15:12:26 13 BY MS. HARTMAN:
 15:12:26 14 Q. Good afternoon, Mr. Hitte.
 15:12:28 15 A. Good afternoon.
 15:12:28 16 Q. As the judge just told you, we are in the process of
 15:12:34 17 selecting a jury for a capital murder case in which the state is
 15:12:36 18 seeking the death penalty.
 15:12:38 19 We need to visit with you-all one on one to make
 15:12:42 20 sure that you understand and are comfortable with the law, so
 15:12:46 21 that if you're chosen as a juror, you'll have some understanding
 15:12:50 22 of what the law is that's going to be applicable to the facts
 15:12:52 23 and circumstances that you'll be hearing in the court.
 15:12:58 24 We anticipate this trial will start the week of
 15:13:00 25 September the 22nd and go anywhere from five days to two weeks,
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15:13:04 1 in other words, two business weeks. Is that going to cause any
 15:13:08 2 conflict for you?
 15:13:10 3 A. I don't believe so.
 15:13:10 4 Q. And we were given to understand and the reason that
 15:13:14 5 we've gotten you in here early, we appreciate your willingness
 15:13:18 6 to come in and see us ahead of your scheduled day. I think we
 15:13:24 7 would all like to express our condolences. It's our
 15:13:26 8 understanding you've lost your mother-in-law?
 15:13:28 9 A. Yes, ma'am, last night. Thank you for your kindness.
 15:13:32 10 Q. I think everyone in the room is -- you know, would
 15:13:34 11 like to express our condolences to you and your family and we
 15:13:38 12 appreciate your cooperativeness and willingness to come in today
 15:13:44 13 and be interviewed and it may be that the way things work, we
 15:13:52 14 may get to you as a juror, we may not, but if we do, at least
 15:13:56 15 we've had the opportunity to visit with you, I guess out of
 15:14:00 16 order, and we appreciate your willingness to come down here,
 15:14:02 17 especially on a day like today and with the circumstances as
 15:14:08 18 they are to see us.
 15:14:10 19 It is possible, also, in addition to working
 15:14:20 20 anywhere from five days to two weeks that during the
 15:14:18 21 deliberation process, the jury might be sequestered overnight at
 15:14:24 22 a hotel down here in Fort Worth. Would that particular
 15:14:28 23 situation cause any difficulties for you and your family?
 15:14:32 24 A. I don't believe so.
 15:14:34 25 Q. Okay. Were you given a witness list to look at
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15:14:40 1 outside?
 15:14:40 2 A. Yes.
 15:14:40 3 Q. Did you recognize anybody's name?
 15:14:42 4 A. Only the defendant's, now that I've seen him again.
 15:14:42 5 Q. I'm sorry?
 15:14:46 6 A. Only the defendant's. I notice that there was a
 15:14:48 7 couple of people with that last name, but nobody I know or have
 15:14:52 8 seen.
 15:14:52 9 Q. Okay. You don't know anybody with the last name of
 15:14:56 10 Crutsinger?
 15:14:56 11 A. No.
 15:14:56 12 Q. All right. Well, what I'm going to do is -- is start
 15:15:00 13 off with how a criminal trial proceeds and how it works and then
 15:15:06 14 I'm going to go in and start talking about what is capital
 15:15:10 15 murder law and, specifically, how do we get to an ultimate life
 15:15:16 16 sentence or death sentence, which are the two possible
 15:15:18 17 punishments if someone is convicted of capital murder. Okay?
 15:15:22 18 And I don't believe you had put down that you
 15:15:26 19 have ever been a juror before.
 15:15:26 20 A. No, I have not.
 15:15:28 21 Q. All right. Basically, the trial process can be in
 15:15:34 22 two parts. The first part is the state putting on evidence to
 15:15:40 23 prove whether the person did what we say that they did. Okay?
 15:15:44 24 And if the jury finds the person guilty, the second phase of the
 15:15:48 25 trial would then start and that's that punishment phase, where
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15:15:52 1 the jury would hear additional information about that person's
 15:15:56 2 life that either side might feel was relevant or important for
 15:15:58 3 that jury to know about.
 15:16:02 4 Just some general rules. The only side that has
 15:16:06 5 to present evidence is the State of Texas. The defense never
 15:16:10 6 has to put on any evidence at all. Did you know that?
 15:16:12 7 A. Yes, I understand.
 15:16:14 8 Q. Okay. There is a presumption of innocence, a person
 15:16:18 9 is presumed to be innocent, unless and until the state proves
 15:16:22 10 that they are guilty beyond a reasonable doubt. Have you heard
 15:16:26 11 that concept?
 15:16:26 12 A. Yes, I have.
 15:16:28 13 Q. If you were instructed that that was what the law
 15:16:30 14 was, could you follow that law?
 15:16:32 15 A. Yes, I could.
 15:16:32 16 Q. So that if Lisa and I did not do our job, we did not
 15:16:38 17 prove our case, that presumption of innocence would kick in and
 15:16:40 18 the jury would have to find the person not guilty. Make sense
 15:16:44 19 to you?
 15:16:46 20 A. Yes, it does.
 15:16:46 21 Q. Okay. Every criminal defendant has the right to
 15:16:52 22 remain silent. Have you heard of that?
 15:16:54 23 A. Yes, I have.
 15:16:56 24 Q. If a person chooses to remain silent and not testify,
 15:16:58 25 the jury would be given an instruction by the judge that they
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15:17:02 1 could not consider that failure to testify for any reason.
 15:17:06 2 Could you follow that instruction?
 15:17:08 3 A. Yes, I could.
 15:17:12 4 Q. All right. Well, let's talk about capital murder.
 15:17:18 5 Capital murder is where you have a murder, plus an extra
 15:17:24 6 ingredient, an aggravating or special circumstance that
 15:17:28 7 surrounds that murder. 'A murder is an intentional killing.
 15:17:32 8 Okay? When we have a capital murder case, we can have any one
 15:17:40 9 of these circumstances and there are a couple of other ones that
 15:17:44 10 aren't -- that don't happen near as often, but these are the
 15:17:48 11 types of offenses that are labeled as capital murder: If you
 15:17:54 12 kill a child under the age of six years of age, if you kill a
 15:17:58 13 police officer or fireman while they are in the course of their
 15:18:02 14 duty, if you kill someone during the course of committing some
 15:18:04 15 other type of felony, and the law that we're talking about
 15:18:08 16 specifically for this case, even though we can't talk to you
 15:18:12 17 about the facts, we can tell you which law is in place, is
 15:18:16 18 intentionally killing more than one person in the same criminal
 15:18:18 19 transaction or the same course of criminal conduct. Does that
 15:18:24 20 make sense to you?
 15:18:24 21 A. Yes, it does.
 15:18:26 22 Q. If a person is convicted of an offense, such as one
 15:18:30 23 of these listed up here, there are only two possible
 15:18:32 24 punishments, a life sentence and a death sentence. A life
 15:18:38 25 sentence is 40 calendar years day for day before the person is
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15:18:42 1 eligible for parole. Okay? In other words, in Texas there is
 15:18:46 2 no life without parole. Make sense to you?
 15:18:50 3 A. Yes, I understand.
 15:18:52 4 Q. Understanding that the possible punishment options
 15:18:56 5 for these types of offenses that are listed up here on the
 15:18:58 6 screen are basically a life sentence of 40 years and a death
 15:19:02 7 sentence. Do you think that these are the types of offenses for
 15:19:06 8 which someone should stand in jeopardy of facing the death
 15:19:10 9 sentence?
 15:19:12 10 A. Are you asking my personal feelings?
 15:19:14 11 Q. That's correct. Do you think that these are the type
 15:19:16 12 of offenses for which a person should be subjected to a possible
 15:19:22 13 death sentence, is what I'm asking?
 15:19:28 14 A. Well, yes, I do, but I would be more concerned about
 15:19:34 15 upholding my duties as a citizen and the laws of Texas.
 15:19:36 16 Q. Okay. Well, it sounds like you think there is a
 15:19:40 17 conflict there. What do you --
 15:19:42 18 A. No. I mean, my personal feelings are -- I guess, I
 15:19:48 19 can separate my personal feelings with my responsibilities to
 15:19:52 20 uphold the laws of Texas.
 15:19:54 21 Q. Okay. Well, I guess, what I -- it sounds to me like
 15:19:56 22 there is a conflict between your personal feelings and the law.
 15:20:00 23 What -- what is that?
 15:20:02 24 A. No, in this case, there is not.
 15:20:04 25 Q. There is not. Okay. I just misunderstood you. All
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15:20:10 1 right. So in a capital murder case, the state would have to
 15:20:14 2 prove certain things beyond a reasonable doubt. That is the
 15:20:16 3 legal standard. Have you heard that before?
 15:20:20 4 A. The term --
 15:20:20 5 Q. Beyond a reasonable doubt?
 15:20:22 6 A. Yes, I have.
 15:20:22 7 Q. Okay. These are the things that we'd have to prove
 15:20:26 8 and only these things beyond a reasonable doubt in order for a
 15:20:30 9 jury to return a verdict of guilty. We'd have to prove the
 15:20:34 10 person on trial, which in this case is Mr. Crutsinger, in
 15:20:38 11 Tarrant County, Texas, on or about a particular date,
 15:20:42 12 intentionally caused the death of more than one person in the
 15:20:46 13 same criminal transaction, and then we would have to prove how
 15:20:50 14 he went about doing that. Okay? Those are the only things that
 15:20:56 15 we would have to prove beyond a reasonable doubt.
 15:21:02 16 Beyond a reasonable doubt is not defined for you
 15:21:04 17 in the law, and I like to tell people that it's whatever level
 15:21:06 18 of evidence for your heart and your mind satisfies you that the
 15:21:10 19 person is guilty. You get to determine how much or how little
 15:21:16 20 that is. Okay?
 15:21:16 21 Now, obviously, we're talking about a criminal
 15:21:20 22 case where someone's life is at stake, so obviously it's a high
 15:21:24 23 standard. It's higher than any other standard that we have in
 15:21:26 24 the legal system, but you, yourself, get to determine how much
 15:21:30 25 evidence is sufficient to prove that to you. Does that make
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15:21:34 1 sense to you?
 15:21:36 2 A. Yes, it does.
 15:21:38 3 Q. All right. The law says that beyond a reasonable
 15:21:40 4 doubt, while they don't define it for you, it is not that 100
 15:21:44 5 percent level, beyond all possible doubt. Do you think that it
 15:21:50 6 would be possible for the state to ever prove a case beyond all
 15:21:54 7 possible doubt or 100 percent to the 12 people who are sitting
 15:21:58 8 in the jury box who did not witness the crime itself?
 15:22:06 9 A. Just to make sure I understand you, are you asking me
 15:22:08 10 if I think that the possibility exists that all 12 people could
 15:22:12 11 be 100 percent convinced of beyond a reasonable doubt?
 15:22:12 12 Q. No. What I'm saying is the law says that I have to
 15:22:16 13 prove my case beyond a reasonable doubt.
 15:22:16 14 A. Yes, I understand.
 15:22:18 15 Q. That any doubt that a juror has to be reasonable and
 15:22:30 16 it has to be based upon the evidence. It can't be like pie in
 15:22:34 17 the sky --
 15:22:36 18 A. Yes, I understand.
 15:22:36 19 Q. -- fanciful, theorizing, speculating, guessing. It
 15:22:40 20 has to be -- it has to be reasonable, and it has to be based
 15:22:44 21 upon the evidence.
 15:22:46 22 A. Yes, I understand.
 15:22:46 23 Q. And most people, to have things proved to them by a
 15:22:50 24 100 percent certainty, would have to have it happen before their
 15:22:54 25 own eyes, and that would obviously make you a witness, right?
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15:23:00 1 A. Correct.
 15:23:00 2 Q. And if you're a witness, you can't be a juror.
 15:23:02 3 A. Correct.
 15:23:02 4 Q. So jurors are going to be people who don't know
 15:23:04 5 anything about the offense, and so that's why I think the law
 15:23:08 6 says that my standard, as the state, is to prove it beyond a
 15:23:16 7 reasonable doubt, not this impossible 100 percent standard.
 15:23:20 8 A. Yes, I understand.
 15:23:20 9 Q. Okay.
 15:23:22 10 A. I can work within those guidelines.
 15:23:22 11 Q. You can work from those guidelines?
 15:23:26 12 A. Yes, ma'am.
 15:23:26 13 Q. You're comfortable with that beyond a reasonable
 15:23:26 14 doubt?
 15:23:26 15 A. Yes, I am.
 15:23:28 16 Q. Okay. And I'm sorry if I'm confusing you. We've
 15:23:32 17 been through -- I know you're 115 and I think we -- on Monday
 15:23:36 18 we'll start with 99, so we've been through almost 100 people, so
 15:23:36 19 we've all been doing this over and over, so --
 15:23:40 20 A. I'm not trying to be difficult.
 15:23:40 21 Q. No, no.
 15:23:42 22 A. I'm just trying to make sure I understand what
 15:23:42 23 you're --
 15:23:44 24 Q. No, no, no. I'm apologizing. You don't need to.
 15:23:46 25 What I'm saying is that we've done this so much
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15:23:50 1 in the last three weeks that it doesn't surprise me if I confuse
 15:23:54 2 you. So you're doing the appropriate thing by trying to clarify
 15:23:56 3 to make your sure you understand. So, no, I'm the one that
 15:24:00 4 should apologize.
 15:24:04 5 When we talk about intentionally, we are talking
 15:24:08 6 about it is the person's conscious objective or desire to do the
 15:24:12 7 act and to cause the result. Does that make sense to you?
 15:24:18 8 A. Yes, it does.
 15:24:20 9 Q. Okay. The state does not have to prove as an element
 15:24:22 10 that the person acted in a premeditated fashion. In other
 15:24:30 11 words, we don't have to prove that they planned in advance to do
 15:24:32 12 the killing. Make sense to you?
 15:24:36 13 A. Yes, it does.
 15:24:36 14 Q. In other words, people can form the intent to kill
 15:24:38 15 and act on it immediately. Do you think that that's possible?
 15:24:42 16 A. Yes, I do.
 15:24:44 17 Q. All right. Do you think it is possible for you to
 15:24:52 18 infer or form an opinion about what someone's intent is by their
 15:24:56 19 actions or their behavior? And let me give you a hypothetical
 15:25:08 20 maybe to --
 15:25:10 21 A. Well, the answer I would have to that would be my
 15:25:14 22 ability to determine intent or behavior would rest upon your
 15:25:18 23 ability to convince me of it.
 15:25:20 24 Q. All right. And -- and how would I go about doing
 15:25:24 25 that?

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15:25:24 1 A. Well, then we're basically talking in circles. You'd
 15:25:26 2 have to prove to me beyond a reasonable doubt.
 15:25:28 3 Q. Absolutely, but, I mean, as far as testimony from
 15:25:32 4 witnesses, right?
 15:25:32 5 A. Yes.
 15:25:32 6 Q. Okay. And evidence?
 15:25:34 7 A. Yes.
 15:25:36 8 Q. Okay. And -- and I guess what I'm getting at is
 15:25:40 9 there are many times people do not verbalize what their intent
 15:25:46 10 is. All right? And jurors are required to listen to evidence
 15:25:50 11 and listen to testimony and form opinions and draw inferences
 15:25:54 12 from what they hear about what a person's intent was.
 15:25:56 13 And let me give you an example. Let's say the
 15:26:00 14 case that's being tried is an aggravated robbery. That's not
 15:26:04 15 this case. Okay?
 15:26:06 16 A. I understand.
 15:26:08 17 Q. But let's say a person walks into a convenience
 15:26:10 18 store, and they don't say a word to the clerk. All right.
 15:26:12 19 There is nothing verbalized, but they come in. They have a ski
 15:26:18 20 mask on. They have a jacket on. They pull a gun out of their
 15:26:22 21 jacket and they point it at the clerk and they lean over and
 15:26:24 22 they gesture toward the cash register.
 15:26:26 23 A. That would prove to me beyond a reasonable doubt that
 15:26:28 24 they intend to do it, rob the place.
 15:26:32 25 Q. Okay. Well, what I'm getting at is that might be a
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15:26:34 1 person where the person doesn't say a word, but you, as a juror,
 15:26:36 2 might have to look at what their behavior was and form an
 15:26:40 3 opinion as to what that person's intent was, and it may be that
 15:26:42 4 you, as the juror think, well, that shows me that this person
 15:26:46 5 intended to rob the place, right? Do you see where I'm going
 15:26:50 6 with this?
 15:26:52 7 A. Yes, I do.
 15:26:52 8 Q. Okay. I'm probably making it more complicated than
 15:26:52 9 it is.
 15:26:54 10 A. I'm used to dealing with technical issues, so I
 15:26:56 11 believe -- I believe I have the capability to work within these
 15:27:00 12 guidelines.
 15:27:00 13 Q. Okay.
 15:27:00 14 A. I understand the concept.
 15:27:02 15 Q. You can listen to the testimony, listen to the
 15:27:04 16 evidence and form an opinion about what someone's intent was or
 15:27:08 17 wasn't?
 15:27:08 18 A. I believe I can.
 15:27:08 19 Q. Okay. Great. All right. One other thing that you
 15:27:14 20 don't see up on there that I have to prove other than -- I mean,
 15:27:18 21 we already know that we don't have to prove premeditation. I
 15:27:22 22 have to prove intent, but not the preplanning as an element.
 15:27:26 23 The state also doesn't have to prove motive, why somebody did
 15:27:28 24 the act. Okay? It may be obvious from the evidence why someone
 15:27:34 25 did the act; it may not be. Sometimes we never know why people
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15:27:38 1 do the things that they do, and so all the law requires Lisa and
 15:27:44 2 I to do is to prove this person did the act and they intended to
 15:27:48 3 do the act and cause the result, make sense?
 15:27:50 4 A. Yes, it does.
 15:27:52 5 Q. Okay. Do you feel comfortable with those being the
 15:27:56 6 types of things that we have to prove in a capital murder case?
 15:28:02 7 A. Yes, I do.
 15:28:04 8 Q. Okay. In other words, can you think of anything else
 15:28:06 9 that you would require me to prove beyond a reasonable doubt in
 15:28:10 10 order to convict for capital murder?
 15:28:14 11 A. It sounds like an open-ended question, but based on
 15:28:18 12 what you've explained to me today, I believe that I could work
 15:28:22 13 within these guidelines.
 15:28:24 14 Q. Okay. All right. Very good. Any questions about
 15:28:26 15 what capital murder is or what the state has to prove in a
 15:28:28 16 capital murder case?
 15:28:30 17 A. Not that I can think of right now.
 15:28:30 18 Q. Okay. All right. Well, like I mentioned before,
 15:28:34 19 there is only two possibilities if someone is convicted of
 15:28:38 20 capital murder; one is life, and one is death. If the person is
 15:28:42 21 found guilty, we then move into the punishment phase, and the
 15:28:46 22 jury would then hear additional evidence if the person -- such
 15:28:54 23 as if the person had any type of prior criminal history, which
 15:28:58 24 they might have a lot, they might not have any, okay, good or
 15:29:02 25 bad character, bad acts, good acts. This would be the time that
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15:29:06 1 that jury would hear about anything else that existed in that
 15:29:08 2 person's life. Make sense to you?
 15:29:12 3 A. Yes, I understand.
 15:29:12 4 Q. Okay. At the conclusion of all of the evidence,
 15:29:16 5 after all the evidence was completed and in, the jury would then
 15:29:20 6 be asked to answer two questions. In other words, the jury
 15:29:26 7 would not go back to the jury room and you wouldn't take a poll
 15:29:30 8 who wants life and what wants death. Okay? Instead, the law
 15:29:34 9 has set up a process to determine what sentence the judge would
 15:29:38 10 eventually give to that person. This would be the first
 15:29:44 11 question. If you would just take a moment to read that to
 15:29:48 12 yourself.
 15:30:04 13 A. (Venireperson complies.) Okay. I'm finished.
 15:30:06 14 Q. Okay. When you get to this question, you have
 15:30:08 15 already found somebody guilty of capital murder, all right,
 15:30:12 16 killing at least two people in the same criminal transaction.
 15:30:18 17 This question asks you to look at all of the evidence that's
 15:30:22 18 been presented to you, the circumstances of the offense and
 15:30:24 19 anything that's been presented to you at the punishment stage.
 15:30:30 20 And it says: Has the state proven to you, as the jury, beyond a
 15:30:36 21 reasonable doubt -- you see that again -- that there is a
 15:30:38 22 probability that the defendant would -- would commit criminal
 15:30:42 23 acts of violence such that they would constitute a continuing
 15:30:48 24 threat to society?
 15:30:48 25 Do you think that it is possible to look at a
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15:30:52 1 crime, the circumstances of a crime and to look at a person's
 15:30:56 2 personal history, whether it's good or bad, and make some
 15:31:00 3 predictions about how they will probable behave in the future?
 15:31:04 4 A. Well, I think that if you were ever faced with this
 15:31:08 5 question, then you're obviously doing just that, and if you
 15:31:12 6 don't feel comfortable with making a decision like that, then
 15:31:16 7 you should have probably said something a lot earlier than right
 15:31:18 8 now.
 15:31:18 9 Q. Okay. And that's what I why we talk with people,
 15:31:22 10 because there are a lot of people who get up there who say --
 15:31:24 11 not a lot of people, but there are some people who say, I
 15:31:28 12 understand this is the way the law is set up, but I personally
 15:31:32 13 do not feel like I could make predictions about how someone
 15:31:38 14 might behave in the future. I don't think it's possible. I
 15:31:42 15 don't think it's fair and I can't do it.
 15:31:42 16 A. I understand that they're --
 15:31:44 17 Q. And I'm asking you: Do you think that you are
 15:31:46 18 capable of looking at evidence presented to you about an offer
 15:31:50 19 and about a person's past history, if they have any, and
 15:31:54 20 about -- and the person themselves, do you feel comfortable in
 15:32:00 21 being able to make predictions about how someone might behave in
 15:32:04 22 the future or about how one probably will behave?
 15:32:08 23 A. Yes, I would feel comfortable making such a decision.
 15:32:12 24 Q. Okay. The words and phrases that are underlined up
 15:32:14 25 there, those are not defined in the law. The law allows you,
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15:32:20 1 the jurors, to define them in your own way. All right?
 15:32:24 2 Probability, what we know about that is it's more than a mere
 15:32:28 3 possibility, because arguably, anything is possible, right?
 15:32:32 4 A. I understand the concept of probabilities.
 15:32:34 5 Q. Okay. We also know that it doesn't mean a certainty,
 15:32:38 6 because, obviously, if we could predict something with all
 15:32:42 7 certainty, we would all be wealthy, because we would be picking
 15:32:46 8 the lottery numbers, right?
 15:32:48 9 A. Sure.
 15:32:48 10 Q. Okay. So probability is somewhere between
 15:32:50 11 possibility and certainty. Where it lies in there is up to you
 15:32:54 12 as an individual juror. Okay?
 15:32:56 13 A. Yes, I understand.
 15:32:58 14 Q. Okay. And I'm sorry if this seems very basic to you
 15:33:02 15 or easy to understand, but like I said --
 15:33:06 16 A. No, that's fine.
 15:33:06 17 Q. -- we go over this with everybody just to make sure
 15:33:10 18 everyone is clear, because once you end up in the jury box, if
 15:33:14 19 you do, we can't clarify or answer questions at that point, so I
 15:33:16 20 certainly don't mean to insult your intelligence.
 15:33:20 21 A. No, no, no.
 15:33:20 22 Q. Okay.
 15:33:20 23 A. I'm not trying to be condescending.
 15:33:24 24 Q. No, no, no. I didn't take it that way. I just -- I
 15:33:26 25 mean, I can tell from your questionnaire, you're obviously very
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15:33:28 1 bright, very intelligent, and we just have to go through all of
15:33:34 2 this step by step to make sure there aren't any questions.

15:33:36 3 Criminal acts of violence can mean anything to
15:33:40 4 you that you want it to mean. It can be anything from simple
15:33:44 5 assault, terroristic threat, all the way up to another capital
15:33:48 6 murder and anything in between.

15:33:50 7 Society can be defined by you any way you
15:33:54 8 choose. It can mean free society, you know, out in our
15:33:58 9 community. You can include in that definition, if you so
15:34:02 10 choose, the people that make up the penitentiary system, not
15:34:06 11 only guards and other inmates, but religious clergy, teachers,
15:34:12 12 counselors, therapists, medical personnel, administrative
15:34:18 13 personnel, anyone with whom a defendant would potentially have
15:34:22 14 contact with. All right? It's up to you to decide who you want
15:34:28 15 to include in society, make sense?

15:34:30 16 A. I understand.

15:34:32 17 Q. Do you think that this is the question that you,
15:34:32 18 yourself, would be capable of answering either yes or no, based
15:34:36 19 upon what evidence was presented to you?

15:34:40 20 A. Yes, I do.

15:34:42 21 Q. Are you open to the possibility of answering it
15:34:44 22 either way?

15:34:48 23 A. Do you mean would I be comfortable answering either
15:34:52 24 yes or no, based on the circumstances?

15:34:54 25 Q. That's correct.

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15:34:56 1 A. Yes, I would.

15:34:56 2 Q. Okay. And you would hold the State of Texas to its
15:35:00 3 burden of proving beyond a reasonable doubt whether that was --
15:35:02 4 with whatever evidence was presented, whether it was the offense
15:35:04 5 itself or any additional evidence, you would hold us to our
15:35:10 6 burden of proof?

15:35:10 7 A. Absolutely.

15:35:10 8 Q. Okay. If all 12 members of the jury unanimously
15:35:16 9 agree to answer this question yes, you would proceed to Question
15:35:16 10 No. 2. All right?

15:35:20 11 A. Okay.

15:35:22 12 Q. If 10 or more agree to answer the question no, that
15:35:28 13 answer would stand and everything would come to a stop and the
15:35:32 14 person would receive a life sentence from the judge.

15:35:36 15 A. I understand.

15:35:36 16 Q. Okay. Are you familiar with these -- with this
15:35:38 17 process? Have you heard about this before?

15:35:42 18 A. No. Well, I mean, only vaguely. I'm not personally
15:35:52 19 familiar with this. I have never done anything like this
15:35:54 20 before.

15:35:54 21 Q. Okay.

15:35:54 22 A. I understand the concept of responsibility.

15:35:58 23 Q. Okay. Anything that -- any verdict that either finds
15:36:06 24 someone guilty or moves them closer to a death sentence requires
15:36:10 25 a unanimous verdict, and that would make sense to you; would it

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15:36:14 1 not?

15:36:14 2 A. Yes.

15:36:16 3 Q. Okay. Assume for the sake of our discussion here
15:36:18 4 that all 12 members have answered this question yes. You would
15:36:26 5 then move to the second issue -- second special issue or
15:36:30 6 question and, if you would, just take a moment to read that to
15:36:34 7 yourself.

15:36:48 8 A. (Venireperson complies.) Yes, I understand.

15:36:50 9 Q. Okay. A couple of things about this question. First
15:36:52 10 of all, unlike the first phase of the trial where you find the
15:36:56 11 person guilty or not guilty, in that first special issue, this
15:37:02 12 question does not have a burden of proof on it. You don't see
15:37:04 13 anywhere beyond a reasonable doubt, do you?

15:37:06 14 A. No.

15:37:08 15 Q. All right. And that means the State of Texas does
15:37:12 16 not have any burden to prove either the existence or lack of
15:37:16 17 mitigating circumstances.

15:37:18 18 A. I understand.

15:37:18 19 Q. Okay. And, of course, the defense never has a burden
15:37:22 20 at all at any time. This question asks you to step back and
15:37:30 21 take a look at the same exact evidence that you've already
15:37:32 22 looked at once before. All right? It is asking you, is there
15:37:38 23 anything in the evidence before you that you find to be credible
15:37:42 24 and that you find to sufficiently lessen the person's moral
15:37:50 25 responsibility for the commission of their crime.

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15:37:52 1 A. I understand the -- I understand what this is saying
15:37:58 2 to me, I believe.

15:37:58 3 Q. Okay. And you, yourself, get to determine what a
15:38:02 4 mitigating circumstance is to you.

15:38:04 5 A. I understand.

15:38:06 6 Q. What is mitigating to you might not be mitigating to
15:38:10 7 me or to the person sitting next to you in the jury box.

15:38:12 8 A. I understand.

15:38:14 9 Q. It may be that you personally don't hear any evidence
15:38:18 10 that you find to be sufficiently mitigating to warrant the
15:38:22 11 person receiving a life sentence over a death sentence.

15:38:24 12 A. I understand.

15:38:24 13 Q. Because the question is asking you, though, that if
15:38:26 14 you do hear something in the evidence that you believe to be
15:38:32 15 true, that you think lessens that person's responsibility and
15:38:36 16 you think it lessens that person's responsibility sufficiently
15:38:40 17 that you would give them a life sentence over a death sentence.
15:38:44 18 Does that make sense to you?

15:38:46 19 A. Yes, it does.

15:38:48 20 Q. Do you think that this is a reasonable way for the
15:38:50 21 law to look at -- well, do you think this is a reasonable way
15:38:54 22 for the law to go about having the jury decide who gets a life
15:38:58 23 sentence and who gets a death sentence?

15:39:02 24 A. Yes, it seems reasonable to me.

15:39:06 25 Q. Okay. Do you think that this is a question that you

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15:39:08 1 would be open to answering either yes or no, based upon the
 15:39:12 2 evidence that was presented to you at the particular trial?
 15:39:16 3 A. Yes, I do.
 15:39:18 4 Q. Are you inclined to answer this question one way or
 15:39:22 5 the other right now?
 15:39:24 6 A. No.
 15:39:26 7 Q. Okay. And the reason I ask that is because we do
 15:39:28 8 have people who come in and say, Because of my feelings about
 15:39:32 9 the death penalty, I am always going to answer those questions
 15:39:36 10 in such a way that a life sentence is always going to be the
 15:39:40 11 result each and every time.
 15:39:42 12 A. I understand that.
 15:39:43 13 Q. And those people, it wouldn't be fair to the state to
 15:39:46 14 have those people sitting on the jury.
 15:39:48 15 A. I understand. If you're not willing to make a
 15:39:50 16 reasoned choice in this matter, then you probably shouldn't be
 15:39:52 17 here.
 15:39:54 18 Q. And on the other hand, we have people who have come
 15:39:58 19 in and said, You know what, if I found someone guilty of capital
 15:40:02 20 murder and I found that they are a future danger, I am never to
 15:40:06 21 going to be open to the possibility of there being sufficiently
 15:40:10 22 mitigating circumstances and I'm always going to answer this
 15:40:14 23 question in such a way that the death sentence is going to be
 15:40:16 24 the result and that certainly wouldn't be fair to the defense to
 15:40:20 25 have someone of that mindset sitting over in the jury either,
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15:40:20 1 right?
 15:40:24 2 A. Yes, I understand.
 15:40:28 3 Q. So when I ask those questions this way, I'm asking to
 15:40:30 4 make sure that you would have an open mind to whatever evidence
 15:40:32 5 might be presented to you and if that evidence dictated that
 15:40:36 6 you -- that you answer these questions in such a way that a life
 15:40:40 7 sentence is the result, then so be it and if the evidence
 15:40:44 8 dictates to you that a death sentence is appropriate based upon
 15:40:48 9 your answers, then so be it as well. Does that make sense to
 15:40:50 10 you?
 15:40:52 11 A. Yes, it does.
 15:40:52 12 Q. And what I'm hearing from you is that you would be
 15:40:56 13 open to the possibility of answering those questions whichever
 15:40:58 14 way the evidence indicates to you they should be answered.
 15:41:02 15 A. Well, that would be what I would consider to be truly
 15:41:02 16 impartial.
 15:41:08 17 Q. Okay. Absolutely. Now, we have talked about this
 15:41:10 18 from -- from kind of an intellectual standpoint.
 15:41:14 19 A. Okay.
 15:41:14 20 Q. Of this is what the law is, do you understand it, can
 15:41:18 21 you follow it. You're from Ohio, and you've lived in Tarrant
 15:41:24 22 County for three years. You lived down in Del Rio --
 15:41:28 23 A. Yes, I did.
 15:41:28 24 Q. -- for a period of time. I would take it that you
 15:41:32 25 are aware that in this state, that when people are sentenced to
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15:41:36 1 death, that there is an actual reality, there is an actual
 15:41:40 2 carrying out of a jury's verdict, basically.
 15:41:46 3 A. Yes, I understand that.
 15:41:46 4 Q. So while I understand that you personally say, yes, I
 15:41:50 5 understand the law, and I can answer those questions in a fair
 15:41:52 6 manner according to what the evidence is, do you feel that you
 15:41:56 7 could personally participate in a decision that might result in
 15:41:58 8 another person being executed?
 15:42:04 9 A. Yes, I do.
 15:42:04 10 Q. Okay. And I ask that, because there are some people
 15:42:08 11 who say, I agree with the law. I want to keep it on the books,
 15:42:12 12 but I personally cannot be a part of it.
 15:42:14 13 A. I understand.
 15:42:14 14 Q. Okay. And that's why I ask that question, is because
 15:42:18 15 sometimes there are people who don't have any problem with the
 15:42:20 16 law; they personally just don't want to be a part of that
 15:42:24 17 particular decision-making process?
 15:42:26 18 A. This is no small matter.
 15:42:30 19 Q. Absolutely not. Absolutely not. And that's why --
 15:42:32 20 that's one of the reasons why we meet with you all individually
 15:42:36 21 one on one, because we have to make important decisions about
 15:42:38 22 who ends up in the jury box. So you are absolutely right, this
 15:42:42 23 is a very serious consideration and a very serious question, no
 15:42:46 24 doubt about it.
 15:42:50 25 Any questions about how a jury might arrive at a
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15:42:54 1 life sentence or a death sentence?
 15:42:56 2 A. Not at this time.
 15:42:58 3 Q. Okay.
 15:43:00 4 VENIREPERSON HITTE: Sir, is there water in
 15:43:00 5 there?
 15:43:02 6 THE COURT: Yes.
 15:43:08 7 Q. (By Ms. Hartman) I've got some cups here.
 15:43:12 8 A. Excuse me.
 15:43:24 9 Q. Okay. Just a couple more things and then I'll be
 15:43:26 10 done and the defense will be visiting with you shortly.
 15:43:30 11 Voluntary intoxication, if somebody voluntarily
 15:43:34 12 intoxicates himself on either alcohol or drugs, that is not a
 15:43:40 13 legal defense to the commission of a criminal offense. In other
 15:43:44 14 words, they can't come in and ask the jury to find them not
 15:43:48 15 guilty and the jury can't find them not guilty, because they
 15:43:50 16 were drunk or high.
 15:43:52 17 A. I understand.
 15:43:54 18 Q. Can you follow that law?
 15:43:56 19 A. Yes.
 15:43:56 20 Q. Okay. It is possible in any type of capital murder
 15:44:04 21 case that a jury might have the opportunity to find someone
 15:44:08 22 guilty of a lesser offense of just straight murder, and in that
 15:44:14 23 case, the punishment range would become from five years to 99
 15:44:16 24 years or life in the penitentiary.
 15:44:20 25 A. If it's something less than capital murder?
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15:44:22 1 Q. That's right. If it it's murder.
 15:44:24 2 A. Okay.
 15:44:26 3 Q. Make sense?
 15:44:26 4 A. Yes, the difference between murder and capital
 15:44:28 5 murder.
 15:44:28 6 Q. Right. In other words, if the state fails to prove
 15:44:30 7 to the jury's satisfaction that this aggravating or special
 15:44:36 8 circumstance did not exist.
 15:44:38 9 A. Okay.
 15:44:38 10 Q. Are you with me?
 15:44:40 11 A. I think you've just lost me there. Are we talking
 15:44:42 12 about two different circumstances?
 15:44:46 13 Q. Let me give you a hypothetical. Let's say -- one of
 15:44:52 14 the capital murder offenses that you saw up on that screen
 15:44:56 15 was -- was the intentional killing of a child under six.
 15:44:58 16 A. Yes.
 15:44:58 17 Q. Let's say that the State of Texas believed when they
 15:45:02 18 went to trial that the child was five years of age, and that at
 15:45:08 19 trial, the evidence actually showed that that child had turned
 15:45:14 20 six.
 15:45:14 21 A. Okay.
 15:45:16 22 Q. Okay. That special circumstance, which is the child
 15:45:20 23 being younger than six years of age, would not be there. Do you
 15:45:24 24 see what I'm saying?
 15:45:26 25 A. I understand that, yes.

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15:45:26 1 Q. And so the jury in that situation, if they did not
 15:45:30 2 believe that we had proven that that child at the time of that
 15:45:32 3 child's death was under six, they would have to find the
 15:45:36 4 defendant guilty in that particular case of murder. Are you
 15:45:44 5 with me?
 15:45:44 6 A. Murder, but not capital murder?
 15:45:46 7 Q. Right.
 15:45:48 8 A. Okay. I understand the difference.
 15:45:50 9 Q. Do you -- do you see what I'm talking about?
 15:45:52 10 A. Yes. The four circumstances that you put up there to
 15:45:54 11 prove capital murder, if one of those cases is proven to be not
 15:45:58 12 true or not applicable --
 15:46:00 13 Q. If it's just an intentional killing.
 15:46:02 14 A. Okay.
 15:46:10 15 Q. Okay. One of the examples was like the policeman or
 15:46:12 16 the fireman being killed in the line of duty.
 15:46:14 17 A. Yes.
 15:46:16 18 Q. Let's say at trial the state doesn't prove that when
 15:46:18 19 that person was killed, they were actually acting in the course
 15:46:22 20 of their duty.
 15:46:22 21 A. Okay.
 15:46:24 22 Q. That special aggravating circumstance would be
 15:46:28 23 missing. Do you see that?
 15:46:30 24 A. Yes, I understand.
 15:46:30 25 Q. And so the jury might say, Well, you know what, all

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15:46:32 1 we have is an intentional killing.
 15:46:36 2 A. Okay. I follow you.
 15:46:36 3 Q. And so we find the person guilty of murder.
 15:46:40 4 A. So you're saying that the jury has some leeway with
 15:46:42 5 the degree of guilt?
 15:46:44 6 Q. I'm saying that if the state fails to prove -- let me
 15:46:50 7 put this back up. It will be easier if we actually look at it
 15:46:56 8 maybe.
 15:46:58 9 Remember when I told you that capital murder is
 15:47:00 10 an intentional killing, which is a murder, plus that extra
 15:47:04 11 ingredient?
 15:47:04 12 A. Yes.
 15:47:04 13 Q. Okay.
 15:47:06 14 A. I understand the difference between the two concepts.
 15:47:08 15 What I don't understand is what my responsibility as a juror
 15:47:10 16 would be if one of the special circumstances hadn't been
 15:47:16 17 fulfilled.
 15:47:16 18 Q. Okay. Well, in -- in a capital murder case -- let's
 15:47:24 19 see. Okay. Let's take these elements up here. These are the
 15:47:36 20 things we have to prove beyond a reasonable doubt.
 15:47:38 21 A. Okay.
 15:47:42 22 Q. Let's say, hypothetically -- again, I'm not talking
 15:47:50 23 about this case -- but the jury is convinced that the person on
 15:47:52 24 trial intentionally killed one person. All right?
 15:47:56 25 A. Yes.

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15:47:56 1 Q. But did not intentionally cause however many other
 15:48:00 2 people they were charged with killing.
 15:48:02 3 A. I understand that.
 15:48:02 4 Q. Okay. They didn't think we had met our burden. All
 15:48:10 5 right? All we would have would be that intentional killing.
 15:48:12 6 A. Okay.
 15:48:14 7 Q. Which is murder.
 15:48:14 8 A. I understand.
 15:48:16 9 Q. We call that a lesser included offense of capital
 15:48:20 10 murder.
 15:48:20 11 A. Okay.
 15:48:22 12 Q. Okay. If the state had not proven all of its
 15:48:26 13 elements of capital murder beyond a reasonable doubt, but we had
 15:48:32 14 proven that the person intentionally caused the death of one
 15:48:36 15 person, okay --
 15:48:38 16 A. Yes.
 15:48:38 17 Q. -- the jury might choose to find the person guilty of
 15:48:40 18 the lesser offense of murder.
 15:48:42 19 A. Okay. I understand that.
 15:48:42 20 Q. Are you with me now?
 15:48:44 21 A. Yes.
 15:48:44 22 Q. Okay. And that's just a possibility in any capital
 15:48:50 23 murder case.
 15:48:50 24 A. Okay.
 15:48:52 25 Q. All right? The punishment range would then become

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15:48:58 1 five years to 99 years or life.

15:49:00 2 A. Okay. I understand where you're at now.

15:49:04 3 Q. Okay. To be a juror, you would have to be able to go
15:49:08 4 into the trial with the entire range of punishment open and
15:49:12 5 available to you and to wait until you heard the specific facts
15:49:16 6 of a case before you decided what the appropriate punishment
15:49:20 7 might be.

15:49:22 8 A. Obviously.

15:49:22 9 Q. Okay. When you say, Obviously, are you surprised --

15:49:26 10 A. I'm sorry.

15:49:26 11 Q. No, no, no. I was going to say you would be
15:49:26 12 surprised at the number of people who say, Well, gosh, if it's
15:49:30 13 an intentional taking of a human life, there is no way I would
15:49:34 14 ever consider the minimum of five.

15:49:36 15 A. Okay. I understand where you're coming from. I
15:49:38 16 understand where you are going with the terminology.

15:49:40 17 Q. Okay. And there are some people who say life in
15:49:42 18 prison is a long time. There is no way I would ever consider
15:49:46 19 the maximum.

15:49:48 20 A. To the best of any knowledge, I have no prejudices or
15:49:52 21 prejudgments or anything like that.

15:49:54 22 Q. Okay.

15:49:54 23 A. If I would get chosen for this jury, I would do my
15:49:58 24 best to listen to the facts and to be comfortable in my own
15:50:04 25 judgments.

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15:50:04 1 Q. Okay. And that's exactly what we're looking for, is
15:50:06 2 people who will have an open mind to the facts and the evidence
15:50:10 3 and not prejudice things or come to a determination of what
15:50:16 4 they're going to do before they even hear anything, because that
15:50:20 5 wouldn't be fair to either side.

15:50:22 6 A. Yeah, obviously. It would be least of all fair to
15:50:26 7 the defendant.

15:50:28 8 Q. Well, and it wouldn't be fair to the people of this
15:50:30 9 county that the State of Texas represents and to the victims.

15:50:34 10 A. Yes.

15:50:34 11 Q. Okay. Do you think that both sides are owed a fair
15:50:38 12 trial?

15:50:40 13 A. Absolutely.

15:50:40 14 Q. Okay. So we've covered the punishment range for
15:50:50 15 murder. Let me talk to you about a last area of the law that
15:50:54 16 may or may not come into play in any criminal case. I'm not
15:50:58 17 saying it would come into play necessarily in this case, but we
15:51:02 18 have to go over any law --

15:51:04 19 A. Possibilities.

15:51:06 20 Q. Sure. There are certain rules that law enforcement
15:51:10 21 has to follow when they arrest people or seize evidence, and you
15:51:16 22 are probably aware of those things like Miranda rights.

15:51:20 23 A. Vaguely, but --

15:51:22 24 Q. Okay. You have the right to remain silent. You have
15:51:26 25 the right to not make any statement at all. You have the right

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15:51:30 1 to have an attorney appointed to represent you. You have the
15:51:36 2 right to stop the interview at any time. You've probably heard
15:51:42 3 those things on TV.

15:51:42 4 A. Yes, I don't usually watch legal shows, but, yes, I
15:51:42 5 have --

15:51:46 6 Q. Okay.

15:51:46 7 A. -- heard vaguely of that.

15:51:52 8 Q. Sure. It is also important when statements are being
15:51:56 9 taken that they are voluntary, that the person --

15:51:58 10 A. Isn't coerced?

15:52:02 11 Q. -- isn't coerced, isn't promised anything, is not
15:52:04 12 threatened in any way, that that person wants to talk to law
15:52:08 13 enforcement. Okay? It is possible that a jury in a criminal
15:52:10 14 case may be called upon, based upon evidence that may be
15:52:14 15 presented to them, to make a determination about whether or not
15:52:20 16 evidence has been obtained legally. Okay? If evidence is
15:52:28 17 raised that the rules have not been followed, the jury might get
15:52:34 18 an instruction from the court that they would have to make a
15:52:38 19 determination about whether or not they thought the rules had
15:52:42 20 been followed, whether the evidence had been obtained legally.
15:52:46 21 Okay?

15:52:48 22 A. Yes, I understand that.

15:52:50 23 Q. And if they believed that it had been obtained
15:52:52 24 illegally, they would be instructed that they would have to
15:52:56 25 disregard that particular piece of evidence, remove it from
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15:52:58 1 their deliberations and, I mean, obviously, you don't -- you
15:53:02 2 don't forget it. It's not like you erase it from your mind, but
15:53:08 3 it kind of becomes what I like to call the big pink elephant in
15:53:12 4 the corner.

15:53:14 5 A. I understand this concept.

15:53:14 6 Q. Okay. You know it's there, but you can't use it as a
15:53:18 7 factor in your determination of whether the person is guilty or
15:53:20 8 not guilty.

15:53:22 9 A. I understand.

15:53:22 10 Q. Okay. It may be that there is evidence presented to
15:53:26 11 you that the rules haven't been followed, and you don't think
15:53:30 12 that evidence is credible. You may think it is credible. Okay?

15:53:34 13 A. The evidence that the rules weren't followed or the
15:53:36 14 evidence itself?

15:53:40 15 Q. Any of that. Okay? It's like any other piece of
15:53:46 16 evidence that you look at as a juror. Do you believe it? Is it
15:53:48 17 credible?

15:53:48 18 A. Okay.

15:53:50 19 Q. Okay. And if you are a juror in a criminal case
15:53:54 20 where that instruction is given to you by the judge, in other
15:53:58 21 words, if you find that the evidence had not been obtained
15:54:02 22 legally, you must disregard that particular piece of evidence
15:54:04 23 and not consider it. Would you be able to follow that
15:54:08 24 instruction?

15:54:08 25 A. Yes, I believe I could.

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15:54:10 1 Q. With the understanding that once that piece of
15:54:12 2 evidence was removed, there might be a sufficient amount of
15:54:16 3 evidence to convince you beyond a reasonable doubt that the
15:54:20 4 person was, in fact, guilty.
15:54:22 5 A. Yes, I understand that.
15:54:22 6 Q. Okay. And in addition, there is the alternate
15:54:28 7 possibility, which is, once that particular piece of evidence is
15:54:32 8 removed, what is left does not satisfy you, and you'd have to
15:54:36 9 find the person not guilty. Understanding those are the two
15:54:40 10 possible outcomes of following that instruction, can you
15:54:44 11 nevertheless follow the instruction?
15:54:46 12 A. Yes, I can.
15:54:48 13 Q. Okay. Would it be difficult in any way?
15:54:58 14 A. Well, I guess, I would have to say that would depend
15:55:00 15 on what it was, realistically.
15:55:00 16 Q. Okay.
15:55:02 17 A. I mean, but I understand that -- I understand the
15:55:06 18 concept of how evidence has to be legally obtained.
15:55:06 19 Q. Sure.
15:55:10 20 A. And if the judge said that something would have to be
15:55:14 21 disregarded, I would do my best to disregard that in my thoughts
15:55:18 22 on the case.
15:55:18 23 Q. Sure, sure, absolutely. And, like I said, it would
15:55:24 24 be a -- it would be a call that you, yourself, would get to
15:55:26 25 make. I mean, it may be that whatever evidence is presented to
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15:55:28 1 you, you choose not to believe. You think that everything was
15:55:32 2 done properly. All right? I mean, you're entitled to go that
15:55:36 3 way, too. It's just going to be based upon what the evidence
15:55:40 4 is.
15:55:40 5 The question I'm asking you is: If you formed
15:55:42 6 the opinion that it was obtained illegally and you were
15:55:46 7 instructed to disregard, could you do that? And it sounds like
15:55:50 8 you can.
15:55:50 9 A. I believe I could.
15:55:52 10 Q. Okay. Any questions about any of the law that I've
15:56:00 11 gone over?
15:56:02 12 A. No, I don't think so.
15:56:02 13 Q. Any other questions? Okay. Well, I'm going to get
15:56:06 14 up and turn this projector off, so it can start cooling down.
15:56:12 15 You have a Bachelor's in polisci?
15:56:16 16 A. Yes, I do.
15:56:18 17 Q. Okay. Any particular reason why -- and I've got a
15:56:24 18 degree in political science too, but I'm just curious, any
15:56:26 19 particular reason that you sought that particular degree?
15:56:34 20 A. I'm trying to think of the most succinct answer.
15:56:38 21 I've always liked history.
15:56:38 22 Q. Okay.
15:56:40 23 A. Polisci is the natural lead-in for law, so I did have
15:56:44 24 a few law classes in school, but nothing on trial law. That was
15:56:48 25 in Ohio, but, basically, I was on an Air Force scholarship for
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15:56:52 1 engineering.
15:56:52 2 Q. Okay.
15:56:54 3 A. I got married when I was a freshman, and I couldn't
15:56:56 4 work third shift and pass college, too, so I downshifted to a
15:57:00 5 Bachelor of Arts in a subject that I liked and had a natural
15:57:02 6 ability for anyway. My wife and I were able to get through
15:57:06 7 school in four years, and I was able to get my commission.
15:57:10 8 Q. Okay. And I noticed that you said you like history,
15:57:12 9 and that's pretty obvious with the people that you put down that
15:57:16 10 you admire the most.
15:57:16 11 What is it about Paul the Apostle that -- in 10
15:57:24 12 words or less?
15:57:32 13 A. He wasn't afraid to -- to see the other side, and
15:57:36 14 then be just as passionate about it as he had been when he had
15:57:42 15 been a very passionate Jew.
15:57:46 16 Q. Okay.
15:57:48 17 A. I guess, I appreciated the intellectual aspects of
15:57:52 18 that.
15:57:56 19 Q. Okay. All right. Constantine the Great, the same
15:57:56 20 question.
15:58:00 21 A. 10 words or less?
15:58:04 22 Q. You can use 11 or 12 if you need to.
15:58:08 23 A. The organizational ability to be able to pull off
15:58:12 24 what he was able to do in a secular vein. The -- basically, if
15:58:18 25 it wasn't for him, Christianity would not only not have been an
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15:58:24 1 Eastern religion, but it wouldn't have been a Western religion
15:58:24 2 either.
15:58:30 3 Q. Okay.
15:58:30 4 A. It would have been regionalized, and that would --
15:58:30 5 that, to me, would be the whole keystone for the Western
15:58:34 6 experience.
15:58:38 7 Q. Okay. Anything about -- and I probably know the
15:58:40 8 answer to this, but I'm going to ask it anyway. Anything about
15:58:44 9 your religious convictions or your church that would prevent you
15:58:48 10 from participating in this type of a process?
15:58:52 11 A. No.
15:58:54 12 Q. What is -- one of the TV shows that you put down, is
15:59:02 13 it Epicurious?
15:59:04 14 A. Yes.
15:59:04 15 Q. What is that about? What is that?
15:59:08 16 A. It's a cooking show.
15:59:10 17 Q. Do they do any particular types of food or --
15:59:12 18 A. All kinds, baking, you name it. I haven't tried most
15:59:18 19 of them, but I don't -- it's an interesting show.
15:59:22 20 Q. Okay. I always look -- if I watch those shows, I
15:59:26 21 always want the people that they have to prepare everything and
15:59:30 22 have them all sitting out in little bowls and stuff.
15:59:34 23 A. Well, the prep work is most of it, but the website is
15:59:36 24 fantastic, because you can -- I'm sorry.
15:59:38 25 Q. No, that's okay.
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16:59:40 1 A. You can pick something off of it, and they are
 16:59:42 2 generally very easy to follow.
 16:59:56 3 Q. Easy to follow? You had indicated you had some
 16:59:58 4 education or training in medicine, psychology, identification
 16:00:04 5 procedures and firearms and weapons.
 16:00:06 6 A. I was a commissioned officer in the Air Force for
 16:00:10 7 active duty for nine years, in the Reserves for a year and a
 16:00:14 8 half and I'm currently in the process of being -- joining a
 16:00:20 9 National Guard unit out of Missouri.
 16:00:22 10 Q. Okay.
 16:00:24 11 A. So we did our basic self-aid, buddy care, first-aid.
 16:00:24 12 Q. Okay.
 16:00:30 13 A. Basic command and control procedures. I'm also a
 16:00:32 14 commercial pilot, so most of that stuff was in the military
 16:00:40 15 background. It was difficult not to -- not to circle a lot of
 16:00:44 16 those, because I have had what I consider a relatively thorough
 16:00:48 17 training at the basic level on a lot of those subjects.
 16:00:52 18 Q. As far as the identification procedures, what
 16:00:54 19 specifically are you talking about there that you've had
 16:00:58 20 training in? Is that fingerprints?
 16:01:00 21 A. It's actually where you want to -- well, not
 16:01:02 22 fingerprints, but as far as basic command and control
 16:01:04 23 procedures, whether it's visual ID, procedural ID, electronic
 16:01:10 24 ID.
 16:01:10 25 Q. Okay.
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16:01:12 1 A. But nothing -- I couldn't ask you to -- if you asked
 16:01:16 2 me to read a fingerprint, I would be lost.
 16:01:18 3 Q. Okay. Well, I was just trying to figure out what
 16:01:22 4 specific identification you were talking about.
 16:01:28 5 You worked -- you were an American Airlines
 16:01:30 6 pilot. Things have been really rough for your company.
 16:01:34 7 A. It's been rough for a lot of companies lately.
 16:01:34 8 Q. Yeah, it has.
 16:01:38 9 A. But things will get better.
 16:01:40 10 Q. Yeah, they are.
 16:01:48 11 The situation with your wife's father, anything
 16:01:52 12 about that that would prevent you from being fair and impartial?
 16:01:56 13 A. Not that I'm aware of. I simply answered that trying
 16:02:00 14 to be as forthcoming as I could.
 16:02:00 15 Q. Okay.
 16:02:02 16 A. I certainly am not a medical expert when it comes to
 16:02:06 17 that.
 16:02:06 18 Q. Okay.
 16:02:06 19 A. As far as how this would apply, his reaction to my
 16:02:12 20 mother-in-law's death is -- is a big question. I don't believe
 16:02:16 21 that if this is going to start on the 22nd, I can't foresee
 16:02:20 22 anything that would keep me from doing that.
 16:02:20 23 Q. Okay.
 16:02:22 24 A. If any of my family responsibilities would infringe
 16:02:26 25 on that.
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16:02:28 1 Q. All right. And normally -- I'll just tell you this.
 16:02:30 2 Normally, when we've been meeting with people, we've been able
 16:02:34 3 to tell them whether they are going to be on the jury or not
 16:02:38 4 before they leave.
 16:02:38 5 A. Okay.
 16:02:38 6 Q. And since we're taking you kind of out of order,
 16:02:40 7 you're not going to get a phone call until sometime next week to
 16:02:44 8 let you know one way or the other, so --
 16:02:46 9 A. That's fine. It was just important to me to -- I
 16:02:50 10 believe very highly in this country and the civic system and my
 16:02:54 11 ability to participate in it was always tempered when I was an
 16:02:58 12 active duty officer. There were certain -- certain realities
 16:03:06 13 that just didn't lend itself to this process.
 16:03:06 14 Q. Right.
 16:03:08 15 A. And I've -- I love living in Tarrant County. I love
 16:03:12 16 where I live, and I'm enthused to be a participant in the
 16:03:16 17 process.
 16:03:18 18 Q. Okay. Very good. And I think -- I think that's
 16:03:18 19 obvious to us by your -- unfortunately, we've run into a lot of
 16:03:22 20 people that really kind of drag themselves down here and just
 16:03:28 21 don't want to even be here. So it's his nice to have someone
 16:03:30 22 come in that is willing to be here and participate.
 16:03:34 23 THE COURT: When are you going to be back into
 16:03:36 24 town, what day, do you know? What day -- when do you come back?
 16:03:44 25 VENIREPERSON HITTE: From the funeral, sir?
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16:03:44 1 THE COURT: Yeah.
 16:03:46 2 VENIREPERSON HITTE: I only have a very vague
 16:03:48 3 understanding of that. As of two hours ago, the actual funeral
 16:03:50 4 hadn't been set, but we're expecting probably the viewing early
 16:03:54 5 Monday, which would make the funeral on Tuesday. So that's why
 16:04:00 6 I was very nervous about trying to keep a 9:00 a.m. Wednesday
 16:04:06 7 appointment, because it could very easily slip.
 16:04:08 8 THE COURT: But it would be later in the week?
 16:04:10 9 VENIREPERSON HITTE: I would imagine I'll be
 16:04:10 10 home by Wednesday, Wednesday or Thursday at the latest. My wife
 16:04:12 11 will probably stay there longer.
 16:04:14 12 Q. (By Ms. Hartman) Okay. Your brother, apparently,
 16:04:20 13 had a DWI in Ohio.
 16:04:24 14 A. Yes, he's had -- he's had several. He would probably
 16:04:26 15 be the expert on the law just with his interaction with that,
 16:04:30 16 and it occurs to me that he was a corrections officer for a
 16:04:34 17 couple of years in Ohio.
 16:04:36 18 Q. Okay.
 16:04:36 19 A. And I'm not sure if that was asked or if I put it
 16:04:38 20 down, but it seems like it might be relevant, but --
 16:04:42 21 Q. Okay. Anything -- well, let me ask you this. And,
 16:04:44 22 of course, we're talking about a completely different state, and
 16:04:48 23 I don't know what the laws are in Ohio and how the criminal
 16:04:50 24 justice system works there. From what you know, do you think he
 16:04:54 25 was treated fairly, unfairly?
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16:04:58 1 A. Yes, I think it would be very safe to say he was
 16:05:00 2 treated fairly.
 16:05:02 3 Q. Okay. Anything about his situation that would
 16:05:04 4 prevent you from being fair and impartial in a capital murder
 16:05:08 5 case here?
 16:05:10 6 A. I don't believe so.
 16:05:24 7 Q. Okay. What is the first thing that comes to your
 16:05:26 8 mind when you think about district attorney? You put suit.
 16:05:30 9 A. That was the first thing that came to mind.
 16:05:32 10 Q. And a criminal defense attorney, briefcase. Anything
 16:05:38 11 significant about those or that just happened to be the first
 16:05:40 12 thing that came in?
 16:05:40 13 A. No. I'm glad the question didn't ask for anything
 16:05:44 14 significant. It was just kind of like what came to mind. By
 16:05:48 15 the end of those, I was kind of tired.
 16:05:52 16 Q. I know. At the end -- we tried to put, I think, the
 16:05:52 17 more important questions up at the front when we had your
 16:05:54 18 attention, because I know by the time you got to Page 14 and 15,
 16:05:54 19 it was just --
 16:05:58 20 A. Well, that's the reason, because the first thing that
 16:06:00 21 comes to mind is usually a given. It's whatever pops in.
 16:06:02 22 Q. Are these positive, negative or no particular --
 16:06:08 23 A. I would call it neutral.
 16:06:10 24 Q. Neutral? Okay.
 16:06:14 25 A. What's the first thing that comes to your mind when
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16:06:16 1 you say pilot?
 16:06:16 2 Q. Plane.
 16:06:18 3 A. There you go. It's not a good pilot or a bad pilot;
 16:06:22 4 it's a just a plane.
 16:06:24 5 Q. Well, you'd be surprised at some of the other answers
 16:06:26 6 we've seen in the course of talking to people. You would
 16:06:32 7 understand why I asked that question.
 16:06:34 8 Let's see. My co-counsel said to tell you that
 16:06:50 9 you have our forgiveness for wearing shorts.
 16:06:54 10 A. Oh, my gosh. Yeah. Well, the first thing I see as
 16:06:56 11 soon as I crossed the door is the highlighted no shorts. I
 16:06:58 12 don't know why I didn't catch that in the house when I was --
 16:07:02 13 Q. If it makes you feel any better, none of the
 16:07:04 14 attorneys like the rules down in that room either, because they
 16:07:06 15 want us let us eat or drink down there, so we're on your side
 16:07:10 16 about the rules.
 16:07:12 17 A. That's okay. I came in June. I really did try to
 16:07:14 18 get out of the house --
 16:07:16 19 MS. HARTMAN: You're perfectly fine. No, we --
 16:07:16 20 we got a chuckle out of that answer. So I appreciate your
 16:07:20 21 talking with me this afternoon and, again, I appreciate your
 16:07:24 22 coming in ahead of schedule and sorry about the circumstances.
 16:07:28 23 Your Honor, at this time, the state would pass
 16:07:30 24 the veniremember.
 16:07:32 25 THE COURT: Okay. Anybody need a break?
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16:07:36 1 MR. MOORE: Do you need a break?
 16:07:36 2 VENIREPERSON HITTE: No, sir, I'm fine.
 16:07:38 3 THE COURT: Okay.
 16:07:38 4 VOIR DIRE EXAMINATION
 16:07:40 5 BY MR. MOORE:
 16:07:40 6 Q. You're ready to go get this over with, aren't you?
 16:07:44 7 A. I want to do as good a job as I can for you.
 16:07:46 8 Q. I understand. My name is Tim Moore, again. This is
 16:07:48 9 Bill Ray, and we represent Billy Jack Crutsinger.
 16:07:52 10 The bottom line, Mr. Hitte, is this -- it's
 16:07:54 11 Hitte, correct?
 16:07:54 12 A. Yes, sir.
 16:07:58 13 Q. And I also -- let me ask you this: Are you driving
 16:08:02 14 to Ohio?
 16:08:04 15 A. No, sir. We'll be flying. My wife is already in
 16:08:06 16 Ohio. She made it there last evening before my mother-in-law
 16:08:08 17 passed.
 16:08:08 18 Q. Was this kind of a sudden deal?
 16:08:12 19 A. We found out she had cancer nine months ago. On
 16:08:16 20 Monday, they said she was probably down to her last month. On
 16:08:20 21 Wednesday, they said she was probably on her last week and she
 16:08:24 22 passed last night, so it was sudden in the end, but it had been
 16:08:28 23 going on for 10 months, if that makes any sense.
 16:08:30 24 Q. We've been through that. Do you need -- do you feel
 16:08:34 25 a need to be with your wife instead of down here answering these
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16:08:38 1 questions?
 16:08:38 2 A. At this point in time?
 16:08:40 3 Q. Yes, sir.
 16:08:40 4 A. No. My family is taken care of, sir. I'll be with
 16:08:44 5 her tomorrow.
 16:08:44 6 Q. Okay. Good. Here is the bottom line. The state has
 16:08:48 7 charged Mr. Crutsinger with a capital murder charge, and they've
 16:08:52 8 made it abundantly clear that if they get a jury to convict him,
 16:08:58 9 that they're going to be asking that jury to kill him, okay, to
 16:09:02 10 execute him. Our position is they do have that burden of
 16:09:08 11 proving him guilty of capital murder, and should they be
 16:09:10 12 successful, that a life sentence would be the appropriate
 16:09:14 13 sentence. Okay. So you can see we're pretty far apart in this
 16:09:16 14 position; wouldn't you agree?
 16:09:20 15 A. Yeah. I would take that as a given, sir.
 16:09:22 16 Q. And what we're looking for is people that come in
 16:09:26 17 here and don't think that either one's position is more
 16:09:30 18 righteous than the other. Could you be that kind of person?
 16:09:32 19 A. I would do my best to be so, sir.
 16:09:34 20 Q. Okay. And we try to get to know you in this short
 16:09:42 21 period of time in an individual capacity just to see if you can
 16:09:46 22 be a fair juror in a case where the death penalty is a
 16:09:54 23 possibility, and I think you understand that in the first stage
 16:10:00 24 of the trial, the state is the one that brings the charges, they
 16:10:04 25 are the ones that have the burden of proving each and every
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16:10:08 1 element that they went over with you. Do you agree with that?

16:10:12 2 A. Yes, sir.

16:10:12 3 Q. And do you have any feelings, as far as a person's
16:10:18 4 guilt, because they've been arrested or indicted by a grand
16:10:22 5 jury?

16:10:22 6 A. No, sir. Actually, quite the opposite. If you don't
16:10:26 7 believe that they're innocent until proven guilty, then you
16:10:30 8 shouldn't probably be here.

16:10:32 9 Q. Okay. And very quickly or not, she just went over --
16:10:42 10 when we talk about them proving these elements, they have to
16:10:50 11 bring the proof that he's guilty. Okay? And what she was
16:10:56 12 talking about a minute ago involves 3823 of our Code of Criminal
16:11:00 13 Procedure, which will tell you that no evidence obtained by an
16:11:04 14 officer or other person in violation of the provision of the
16:11:08 15 constitution or laws of the State of Texas or the United States
16:11:10 16 of America will be admitted into evidence against the accused in
16:11:16 17 the trial of any criminal case. And what that's telling you is
16:11:20 18 that the police have to follow the rules, also. You understand
16:11:22 19 that?

16:11:22 20 A. Yes, sir.

16:11:22 21 Q. And so if you're sitting on the jury and there is an
16:11:28 22 issue as to some questionable or illegal police conduct, the
16:11:34 23 judge will tell you in that second paragraph that in any case
16:11:36 24 where legal evidence raises an issue entered hereunder, the jury
16:11:42 25 shall be instructed that if it believes or has a reasonable
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16:11:46 1 doubt that the evidence was obtained in violation of the
16:11:48 2 provision of this article, then in such event, the jury shall
16:11:52 3 disregard any such evidence so obtained.

16:11:58 4 Now, let me explain that to you a little bit,
16:12:00 5 because sometime that's easy to do and sometimes it's kind of
16:12:04 6 hard to do.

16:12:06 7 Just take, for instance, a case where the police
16:12:10 8 get a tip that there is some drugs in somebody's house from some
16:12:16 9 unknown person. They just say they'll -- over there at 5229
16:12:22 10 St. James Place, there's -- somebody has drugs and they just run
16:12:26 11 in and kick the door in and roust everybody out and find some --
16:12:30 12 some drugs in there and that person was on trial and you know
16:12:34 13 what the law is, that they would have to have a warrant that
16:12:36 14 established probable cause from a magistrate to enter that house
16:12:42 15 or they had to get some kind of consent from the owner. You
16:12:46 16 just can't go busting into somebody's house. Okay?

16:12:50 17 So you're sitting on the jury and you may be
16:12:52 18 faced with that and you may think, well, I think the police
16:12:56 19 weren't right. I'm going to throw out that evidence, and if
16:13:00 20 they don't have any evidence of drugs, you have to find that
16:13:02 21 person not guilty. Do you agree with that?

16:13:06 22 MS. HARTMAN: Well --

16:13:08 23 A. Well, I guess what I would say to that, sir, is that
16:13:10 24 if the judge instructed me to disregard a certain portion of
16:13:16 25 evidence or a certain line of evidence, then I would do my best
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16:13:18 1 to disregard it and continue on in my responsibility.

16:13:24 2 Q. (By Mr. Moore) Okay. But my point is this: The
16:13:26 3 judge isn't going to tell you to disregard that himself. He's
16:13:32 4 going to tell you what that says. Okay? So that's a decision
16:13:36 5 that you have to make, whether you think that that evidence may
16:13:40 6 have been obtained by any kind of illegal police conduct. Do
16:13:46 7 you see that?

16:13:48 8 A. Okay. So if I understand you, then I would have to
16:13:52 9 make a judgment on my own whether it was done?

16:13:56 10 Q. Exactly. That's exactly right. You're kind of a
16:13:58 11 mini-judge of the law in that position. Okay. And if you're
16:14:04 12 explained the law and it says that you're to disregard anything
16:14:08 13 that was obtained in violation of the law or the Code, then you
16:14:12 14 can't consider it. Okay?

16:14:16 15 A. Okay.

16:14:16 16 Q. In my example to you, if you thought that the police,
16:14:22 17 in busting in somebody's house without cause, without a warrant,
16:14:26 18 without a reason and obtained those drugs illegally, then my
16:14:30 19 question to you is, could you set those drugs aside and find
16:14:36 20 that person not guilty, because you wouldn't have any evidence,
16:14:38 21 other than the drugs?

16:14:46 22 A. If I understand you correctly, if the only piece of
16:14:48 23 evidence that was presented, if it was arrived at in an illegal
16:14:52 24 way, then if there was nothing else -- if there was nothing else
16:15:02 25 involved in the case, no other lines of evidence, then, yeah, I
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16:15:06 1 don't -- I don't understand how you could not -- or how you
16:15:10 2 could say guilty. I don't know.

16:15:12 3 Q. Okay. That's my question. The short and simple is:
16:15:14 4 Can you do that?

16:15:16 5 A. I believe I can.

16:15:16 6 Q. And in some cases, maybe a really bad murder case
16:15:20 7 bad child killing or molestation case, the police could arrest a
16:15:28 8 person without probable cause. Do you understand that?

16:15:34 9 A. I think I understand the concept, yes.

16:15:36 10 Q. And they could take that person down to the police
16:15:38 11 station and they could give him the Miranda warnings all day
16:15:42 12 long, but you could still feel that it was an illegal arrest
16:15:46 13 and, therefore, that confession may not be considered. Do you
16:15:50 14 understand that concept?

16:15:52 15 A. Yes, I believe I understand the concept.

16:15:54 16 Q. Okay. And you would get the same instruction from
16:15:58 17 the judge as -- that's sitting right up there that we just went
16:16:04 18 over, just substitute the confession for the drugs. Okay?

16:16:08 19 A. Okay.

16:16:10 20 Q. And knowing that, it may be a little different
16:16:14 21 situation, wouldn't it be?

16:16:18 22 A. Yes. I --

16:16:20 23 Q. I mean, you've got a more serious offense than just
16:16:24 24 possessing drugs, correct?

16:16:26 25 A. Yes, I understand the rules of evidence. I don't
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16:16:30 1 believe they change with the type of offense, do they?
 16:16:34 2 Q. That's exactly right. You'd still, if you thought
 16:16:34 3 that confession was obtained illegally and that was the only
 16:16:38 4 evidence that they had, then you would have to let that person
 16:16:42 5 walk out of the courtroom also. You understand that?

16:16:48 6 A. Assuming that there were no other -- if the only
 16:16:52 7 evidence that was presented was obtained illegally, if it wasn't
 16:16:58 8 allowed to be considered, the state would still have -- they
 16:17:04 9 would still have the responsibility of proving beyond a
 16:17:08 10 reasonable doubt.

16:17:08 11 Q. Well, say that's all they had.

16:17:10 12 A. Well, then I guess they would have nothing.

16:17:12 13 Q. Right, you could follow it in that particular
 16:17:16 14 situation?

16:17:16 15 A. I think I understand the concept, yes, and I think I
 16:17:20 16 could act accordingly within it.

16:17:22 17 Q. Okay. The same thing with -- in a capital murder
 16:17:34 18 case or any case where -- particularly a capital murder case
 16:17:40 19 where the state does present enough evidence to your
 16:17:44 20 satisfaction that a person is guilty, then you understand that
 16:17:46 21 that second stage you go into, which is punishment. The first
 16:17:52 22 stage is nothing more than can the state prove the elements of
 16:17:54 23 the indictment that they brought. Okay?

16:17:58 24 And now you know that in a capital murder case,
 16:18:04 25 that first question -- you go into the punishment stage and you
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16:19:46 1 is a probability that the defendant would commit criminal acts
 16:19:50 2 of violence that would constitute a continuing threat to
 16:19:54 3 society. Okay. That's that first question that you're faced
 16:19:58 4 with.

16:19:58 5 The judge will also tell you that in considering
 16:20:02 6 that question, that whether taking into consideration all of the
 16:20:06 7 evidence, including the circumstances of the offense, the
 16:20:10 8 defendant's character and background and -- I'm sorry.
 16:20:18 9 That's -- that's what I'm looking for. Okay.

16:20:22 10 So after you've read that first question, the
 16:20:24 11 judge will tell you that in deliberating on this specific issue,
 16:20:28 12 the jury is instructed to consider all evidence admitted at the
 16:20:32 13 guilt/innocence stage and the punishment stage, including
 16:20:36 14 evidence of the defendant's background or character or the
 16:20:40 15 circumstances of the offense that militates for or mitigates
 16:20:44 16 against the imposition of the death penalty, okay, and taking
 16:20:48 17 into consideration everything that you've heard.

16:20:50 18 And then is there is that word mitigation in
 16:20:54 19 there, mitigates, and I'm not going to ask you about -- you
 16:21:00 20 know, we can't ask you about what you -- what you would consider
 16:21:04 21 evidence of a continuing threat to society, but my question is
 16:21:08 22 this: After you found somebody guilty of killing two people
 16:21:12 23 intentionally, would you automatically answer that as a yes,
 16:21:18 24 they would be a continuing threat to society?

16:21:24 25 A. No, sir. I don't think I'm going to tell you that I
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16:18:06 1 hear -- hear more evidence presented by the state, you hear
 16:18:14 2 evidence presented by the defense and you imagine the state is
 16:18:18 3 going to bring you everything bad that they can about the person
 16:18:22 4 and the defense is going to try to bring you everything that is
 16:18:26 5 good about the person. Then all 12 of you -- and it's
 16:18:30 6 anticipated in our law that jurors are not on anybody's side.
 16:18:36 7 Okay? And they're not on each other's side either. We're
 16:18:42 8 looking for people that have their own individual mindset and, I
 16:18:48 9 think, you're one of those type of people, aren't you?

16:18:52 10 A. I'd like to think I am.

16:18:54 11 Q. I believe you are, but you know what I mean?

16:18:56 12 A. Yes, sir, I understand. You wouldn't want one to
 16:19:00 13 sway another.

16:19:00 14 Q. That's exactly right. So you've heard -- you've
 16:19:04 15 heard enough evidence in the first phase that a person
 16:19:06 16 intentionally, as you know that word now means, it was that
 16:19:12 17 person's conscious objective and desire not only to engage in
 16:19:14 18 the conduct, but to cause the result. So whether it's shooting
 16:19:20 19 with a firearm or cutting with a knife or strangling with a
 16:19:24 20 rope, that's what they want to do to two people. You've been
 16:19:28 21 convinced beyond a reasonable doubt of that. You've returned a
 16:19:30 22 verdict of guilty, and you've heard all of the evidence in the
 16:19:34 23 punishment stage, so you go back with the charge that the judge
 16:19:40 24 gives you and you sit down and you go, okay, now, we've got all
 16:19:44 25 of this evidence before us, and we're faced with whether there
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16:21:26 1 would automatically answer yes or no to anything.

16:21:26 2 Q. Okay.

16:21:28 3 A. I think as a juror you should be willing to answer
 16:21:30 4 yes or no based on how -- what your perception of the evidence
 16:21:36 5 is at the time.

16:21:36 6 Q. Okay. And you've -- Ms. Hartman told you that
 16:21:44 7 society can be a prison society. Is that where your brother
 16:21:46 8 worked, in a prison?

16:21:48 9 A. Yes, sir, he did. He doesn't currently and hasn't
 16:21:50 10 for, I believe, seven to eight years, but I'm not quite sure on
 16:21:58 11 that, something of that time frame.

16:21:58 12 Q. Okay. Did he ever talk to you about his work there
 16:22:02 13 in the prison?

16:22:04 14 A. Yeah, some -- somewhat. I haven't lived in Ohio
 16:22:08 15 since 1990, so the only time I get to go back is usually on
 16:22:14 16 sporadic visits. Up until I separated from the Air Force, it
 16:22:18 17 was usually on leave at two weeks at a time. So when we would
 16:22:22 18 usually get together, it was usually family situations, but,
 16:22:26 19 yeah, I would say from time to time, he would talk about it, but
 16:22:28 20 it wasn't like -- it wasn't like we had -- we never had the
 16:22:32 21 opportunity to -- to get together every Friday night and have
 16:22:36 22 that continuing interpersonal relationship. It's always been,
 16:22:42 23 you know, snapshots, you know, a day here, you know, 10 or 15
 16:22:46 24 minutes on the phone there. So I can't say, no, we've never
 16:22:52 25 talked about work, but I would say that we never got to a level
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16:22:56 1 of detail. He was always more interested in what I was doing at
16:23:00 2 the time and was more -- we would talk about, you know, where I
16:23:02 3 was flying, what I was doing, that kind of thing.

16:23:06 4 Q. Okay.

16:23:06 5 A. And he doesn't talk about it at all now that he
16:23:10 6 doesn't do it, and so --

16:23:12 7 Q. What do you think about that society being a prison
16:23:16 8 society? Do you have any thoughts about that?

16:23:22 9 A. Do you mean do I consider a population in a prison to
16:23:26 10 be part of society in general --

16:23:26 11 Q. Right.

16:23:28 12 A. -- or to be their own society?

16:23:30 13 Q. Their own society.

16:23:34 14 A. I'd say that would be a subset of society of ours
16:23:38 15 within whatever -- whatever country they are a part of, but they
16:23:44 16 would certainly operate under their own rules.

16:23:46 17 Q. Right. Okay. All right. So in our little example
16:23:58 18 here you found somebody guilty of capital murder, you come to
16:24:00 19 this -- and you understand that -- that the state has the burden
16:24:04 20 of proving, again, beyond a reasonable doubt this future
16:24:10 21 dangerousness question to you. Okay? Do you understand that?

16:24:14 22 A. Yes, sir, I do.

16:24:18 23 Q. So presuming that the person is not going to be a
16:24:20 24 future danger, just like when they have the burden of proving --
16:24:24 25 and he's presumed innocent?

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16:24:26 1 A. Yes, sir, I understand that concept.

16:24:28 2 Q. And they've got to convince you beyond a reasonable
16:24:30 3 doubt that that's a yes answer. If you say no, it's an
16:24:34 4 automatically life sentence. You know that?

16:24:36 5 A. Yes, I've been made aware of that today.

16:24:40 6 Q. So after you've answered that yes, if you answer that
16:24:42 7 no, you don't even go to the next question; if you answered it
16:24:46 8 yes, you go to that one last question and it also tells you that
16:24:56 9 to look at the circumstances of the offense the defendant's
16:25:00 10 character and background again and then it throws in the
16:25:04 11 personal moral culpability of the defendant. What does that
16:25:08 12 personal moral culpability mean to you?

16:25:22 13 A. I'm a little bit embarrassed to think that I can't
16:25:26 14 think of Webster's definition for culpability right now.

16:25:30 15 Q. Well --

16:25:30 16 A. Is that --

16:25:32 17 Q. Kind of blameworthiness, does that make any
16:25:38 18 difference?

16:25:38 19 A. Did you say blameworthy?

16:25:42 20 Q. Blameworthiness.

16:25:48 21 A. And what was your question again? Do I understand
16:25:50 22 it, or what does it mean to me?

16:25:52 23 Q. What does it mean to you?

16:25:58 24 A. The defendant's character and background and personal
16:26:00 25 moral culpability of the defendant. My initial reaction to this
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16:26:16 1 is that this seems to provide the juror with the ability to deal
16:26:24 2 with the unforeseen possibilities of the individual. The
16:26:28 3 individual circumstances that couldn't be defined if you wrote a
16:26:32 4 book of law that would fill this room, is what this seems to me.
16:26:40 5 I can't -- nothing really comes to mind. Personal moral
16:26:42 6 culpability, personal moral blameworthiness of the defendant,
16:26:50 7 I'm not -- I'm sure there is probably a law thesis out there on
16:26:56 8 what they meant when they wrote this code, but --

16:27:02 9 Q. Kind of tough to get a grasp on, isn't it?

16:27:04 10 A. Well, it's tough to be in a spot and give you a
16:27:08 11 definition.

16:27:10 12 Q. I understand. And I think you know my purpose in
16:27:12 13 asking you this is that here is our capital murder scheme, here
16:27:18 14 is our death penalty scheme where you found somebody guilty of
16:27:22 15 intentionally killing two or more people, you found beyond a
16:27:26 16 reasonable doubt that future dangerousness -- that's pretty
16:27:30 17 simple to understand, isn't it?

16:27:32 18 A. Yes, I understand that concept.

16:27:32 19 Q. And so we get to this last question and it's kind of
16:27:36 20 hard to understand it, isn't it?

16:28:02 21 A. I'm trying to think of what I'm wanting to say and
16:28:06 22 how to say it properly. If I understand the words as you've
16:28:12 23 described them to me, it would seem to me the personal moral
16:28:16 24 capability would be my impression of what the defendant's --
16:28:26 25 responsibility is not quite the right word. I'm sorry. I can't
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16:28:40 1 really --

16:28:44 2 Q. Well, let me ask you this: You told Ms. Hartman that
16:28:48 3 even though you found somebody guilty of capital murder, even
16:28:52 4 though you found beyond a reasonable doubt they were a future
16:28:56 5 danger to society, that in your mind, you would still be open to
16:29:02 6 answering this question yes, correct?

16:29:08 7 A. Yes or no. This seems to me to cover -- this seems
16:29:12 8 to be a mechanism to cover the bases that you've already said
16:29:16 9 yes on the first question, but to give you -- to give you one
16:29:20 10 last chance before you take that last step.

16:29:24 11 Sir, if -- if nothing else comes through here, I
16:29:28 12 consider this to be an extremely serious situation and extremely
16:29:32 13 serious responsibility to sit in that chair, and before I would
16:29:36 14 answer yes to either of those questions, I would appreciate the
16:29:40 15 ability to not have to answer yes to both of them. That's
16:29:42 16 what -- what I'm trying to get a point to you is would I be
16:29:50 17 comfortable answering yes to the first one or no to the first
16:29:52 18 one? I certainly would. Would I be comfortable with answering
16:29:54 19 any combination of these two? It would actually be my
16:29:58 20 responsibility to answer them truthfully, so could I answer yes
16:30:00 21 on the first one and no on the second one? Yes, I could. Could
16:30:04 22 I conceive of a concept now that I've sat here for that
16:30:08 23 scenario, I have to admit to you I can't right now, but I would
16:30:12 24 appreciate the ability to have that option.

16:30:16 25 Q. You would appreciate the ability to have that option
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16:30:20 1 to say yes?

16:30:22 2 A. To say yes or no.

16:30:22 3 Q. Okay. You just can't think right now of any

16:30:24 4 situation where you would have a yes after considering all of

16:30:30 5 the other?

16:30:32 6 A. No.

16:30:32 7 VENIREPERSON HITTE: What I can't -- I'm sorry,

16:30:36 8 Your Honor. I'm not trying to be difficult.

16:30:40 9 A. What this seems to me to be, after having it -- after

16:30:44 10 digesting it for 30 minutes is it would give me the option of

16:30:50 11 arriving at a yes answer on the first question and still be able

16:30:58 12 to take into account the totality of everything that I have been

16:31:02 13 presented.

16:31:06 14 Q. (By Mr. Moore) Exactly.

16:31:08 15 A. So -- and if I got to that point and if I personally

16:31:12 16 felt that a no response was the proper response in that second

16:31:16 17 question, that I could quite comfortably say no. I would also

16:31:20 18 quite comfortably be able to say yes, and I wouldn't

16:31:24 19 particularly have any desire to say yes or no on either

16:31:26 20 question. Does that --

16:31:30 21 Q. I just want to know how you feel, and I appreciate

16:31:34 22 that.

16:31:34 23 A. I seem to have said a lot of words. I'm not sure

16:31:38 24 that I've actually --

16:31:40 25 Q. Well, it's a tough concept, isn't it?

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16:31:42 1 A. I'd say it is. It's serious business.

16:31:46 2 Q. Along those lines, Texas is allowed to accept a life

16:31:50 3 sentence in a capital murder case. You understand that?

16:31:54 4 A. Yes.

16:31:56 5 Q. And in that regard, our sentencing scheme is supposed

16:32:02 6 to be kind of a restrictive and, in fact, it gives you that last

16:32:08 7 question to say, life is okay, a life sentence in this

16:32:10 8 particular situation, if you look at it that way.

16:32:14 9 A. Well, yeah. I wouldn't look at it as so much as life

16:32:18 10 is okay, but rather -- rather that the death sentence isn't

16:32:28 11 warranted, that the crime has been proven, that the punishment

16:32:32 12 should be severe, that this would give the juror the ability to

16:32:36 13 impose a severe punishment without going to that last step, is

16:32:42 14 how it comes across to me. I could be wrong on this, but that's

16:32:46 15 -- since it would be my judgment in the hypotheticals of that

16:32:52 16 that's how I would, on first blush, tend to apply this or apply

16:32:56 17 this.

16:33:00 18 Q. The bottom line is, though, that that last question,

16:33:02 19 you're open to either answer?

16:33:04 20 A. Yes.

16:33:04 21 Q. What do you think about this life sentence in Texas?

16:33:10 22 What have you been told?

16:33:12 23 A. As regards to --

16:33:14 24 Q. You've been told that we really don't have life

16:33:16 25 without parole.

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16:33:18 1 A. Right. It's a 40-year sentence from the day it's

16:33:20 2 imposed, I believe, is what the counselor said.

16:33:22 3 Q. And that's 40 calendar years, day for day, no matter

16:33:28 4 how good you are. You can't even been considered by the parole

16:33:34 5 board until 40 years goes by. Do you understand that?

16:33:36 6 A. I believe now I do, as it's been explained.

16:33:40 7 MR. MOORE: And, Your Honor, at this point in

16:33:42 8 time, I'd like to explain the different procedures of parole

16:33:48 9 that we talked about earlier.

16:33:50 10 THE COURT: Denied.

16:33:54 11 Q. (By Mr. Moore) And that's not guaranteeing after

16:33:56 12 those 40 calendar years that that person is going to walk out.

16:34:00 13 You understand that?

16:34:00 14 A. Yes. That seems to me that it's just the opportunity

16:34:04 15 for a board evaluation.

16:34:06 16 Q. That's exactly right.

16:34:28 17 One question I have for you is -- and I'll wrap

16:34:32 18 up here -- when Ms. Hartman was showing you that list of cases

16:34:36 19 that the State of Texas has said constitute capital murder or

16:34:40 20 death penalty cases, do you remember that?

16:34:44 21 A. Yes, sir.

16:34:44 22 Q. You said, and I didn't really understand, she asked

16:34:48 23 you that question, if you think that those are the kinds of

16:34:52 24 cases that subject a person to the death penalty and you said,

16:34:58 25 Well, I guess I could separate my personal feelings from the

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16:35:00 1 law. Do you remember that?

16:35:02 2 A. Well, yeah, I remember saying that, sir. I guess

16:35:04 3 what I was trying to -- if you're asking me for a judgement on

16:35:08 4 the laws of Texas, I don't really feel comfortable in this venue

16:35:12 5 to say or even schooled in the law enough to give you a

16:35:18 6 judgment.

16:35:20 7 My -- what I was trying to say is that I would

16:35:22 8 do my best to execute my responsibilities within the laws of

16:35:28 9 Texas, as they have been explained to me or as I could study

16:35:34 10 them myself.

16:35:36 11 Q. Okay.

16:35:36 12 A. I wasn't trying to imply that somehow I was -- had a

16:35:42 13 personal feeling that would imply or that would make me biased

16:35:46 14 in one way or the other. I wasn't trying to give a -- make a

16:35:52 15 statement on what I thought the laws of Texas were. To me, it's

16:35:56 16 more important for a juror to understand the laws. It's the law

16:36:02 17 that it is now that you get to be working within.

16:36:08 18 Q. Well, I think -- I think you understand that this is

16:36:12 19 an awesome undertaking, isn't it?

16:36:16 20 A. Yes, sir. I would say it's one of the most.

16:36:20 21 Q. Do you have any questions for me or comments or

16:36:22 22 concerns before we wrap this up?

16:36:24 23 A. I'd just like to say I appreciate your time and your

16:36:28 24 kindness and your flexibility.

16:36:30 25 Q. Well, we certainly appreciate your time and

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16:36:34 1 flexibility considering what's going on in your life.

16:36:36 2 A. Thank you, sir.

16:36:36 3 MR. MOORE: And we wish you the best. Thank
16:36:38 4 you.

16:36:40 5 THE COURT: Okay. Mr. Hitte, we will let you
16:36:42 6 know something as soon as we know. And, frankly, you are Number
16:36:46 7 115 on our list. You're not likely to be reached, but one way
16:36:56 8 or the other, we will let you know and it will be as quickly as
16:37:00 9 we know. It could be as late as next Friday, but it will
16:37:04 10 probably be earlier than that and we'll leave a message.

16:37:08 11 VENIREPERSON HITTE: My cell phone should be
16:37:08 12 with me or I should be in regular contact with the messages on
16:37:12 13 my cell phone.

16:37:14 14 THE COURT: Okay. And that would have been on
16:37:16 15 your questionnaire?

16:37:16 16 VENIREPERSON HITTE: Yes. Well, the bailiff or
16:37:18 17 the deputy has called me on it several times today.

16:37:22 18 THE COURT: Okay. Very good. Thank you, sir.
16:37:24 19 You may be excused.

16:37:26 20 VENIREPERSON HITTE: Yes, thank you.
21 (End of proceedings for the day.)

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CERTIFICATE

2 STATE OF TEXAS)

3 COUNTY OF TARRANT)

4 I, Shelley S. Curtis, Deputy Official Court Reporter
5 in and for the 213th District Court of Tarrant County, State of
6 Texas, do hereby certify that the above and foregoing contains a
7 true and correct transcription of all portions of evidence and
8 other proceedings requested in writing by counsel for the
9 parties to be included in this volume of the Reporter's Record,
10 in the above-styled and numbered cause, all of which occurred in
11 open court or in chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits, if any,
14 admitted by the respective parties.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$840.00 and was
17 paid/will be paid by TARRANT COUNTY.

18 WITNESS MY OFFICIAL HAND this the ____ day of
19 _____, 2004.

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21 Shelley S. Curtis, CSR 4557
22 Expiration Date: 12/31/04
23 Deputy Official Court Reporter
24 213th District Court
25 Tarrant County, Texas

24 200 Menlo Park Drive
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Shelley S. Curtis
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